

**From:** PEGGY MITCHELL  
**To:** Billy Wasson  
**Subject:** Re: Fwd: draft fifth addendum

I have had an opportunity to review this draft. and don't see any problems with it as it stands from my review. In checking my contract file on Melvin Mark, I find that I am missing copies of the first amendment (1/28/98) and the fourth amendment (10/15/99). I have left a voice message with Mike Hansen to see if he has a copy or remembers reviewing them. Do you happen to have an extra copy of either one?

Thanks,  
Peg

>>> Billy Wasson 02/24 7:57 AM >>>

Please start contract review on this contract extension draft of Melvin Mark contract.

**CC:** Mike Hansen

## FIFTH ADDENDUM TO PROJECT MANAGEMENT AGREEMENT

DATED: \_\_\_\_\_ 2000

BETWEEN: MARION COUNTY, OREGON, a political  
subdivision of the State of Oregon and  
SALEM AREA MASS TRANSIT DISTRICT,  
a political subdivision of the State of Oregon (together, "Owner")

AND: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation ("Manager")

### Recitals:

A. Owner and Manager are parties to a Project Management Agreement dated June 1, 1997 (the "Project Agreement"), as amended by an Addendum to Project Management Agreement executed by Marion County on January 28, 1998 (the "First Addendum"), as further amended by a Second Addendum to Project Management Agreement dated April 2, 1998 (the "Second Addendum"), as further amended by Amendment #3 to Contract for Services signed on November 4, 1998 (the "Third Addendum"), and as further amended by Amendment #4 to Project Management Agreement dated as of October 15, 1999 (the "Fourth Addendum"). The Project Agreement, the First Addendum, the Second Addendum, the Third Addendum, and the Fourth Addendum are collectively referred to in this Fifth Addendum to Project Management Agreement (the "Fifth Addendum") as the "Agreement."

B. Attached as Exhibit A is a list of services that Manager has been asked to continue to perform past the existing expiration date of the Agreement. The parties desire to extend the Term of the Agreement to allow time for performance of such services and to provide for payment for such services.

C. Capitalized terms which are used in this Fifth Addendum and which are defined in the Agreement shall have the meanings given to them in the Agreement unless expressly amended by this Fifth Addendum.

### Agreements:

In consideration of Manager's agreement to perform the ~~Additional~~ Services and the mutual promises of the parties set forth in this Fifth Addendum and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Extension of Term. The Term shall be extended through December 31, 2000. Section 1.3.4 of the Project Agreement, Section 5 of the First Addendum, and Section 1 of the Second Addendum are hereby deleted. The Term shall continue after December 31, 2000, on a

month to month basis, unless Owner terminates the Agreement by giving Manager at least 30 days' prior written notice of termination at any time after December 1, 2000.

2. Payment for Extended Term. Owner shall continue to pay Manager \$19,886.36 per month, ~~as an additional Basic Fee,~~ on the first day of each calendar month throughout the extended Term.

3. Change Order Fee. Manager agrees that Owner shall not be obligated to pay Manager the fee for Changes as described in the last sentence of Section 6.2 of the Project Agreement.

4. Clarification of Duties Regarding FTA. As provided in Section 11 of the Project Agreement, Manager must perform its obligations in conformance with the FTA Requirements if and to the extent the FTA Requirements are required by law to apply to Manager. ~~Manager does not have any obligations related to Owner's compliance with the FTA Requirements.~~ Any activities related to Owner's compliance with the FTA Requirements (including, without limitation, responses to audit requests) shall be additional services under the Agreement.

5. Effect of Fifth Addendum. The Agreement is modified only as set forth in this Fifth Addendum. ~~Except As expressly modified herein,~~ the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Fifth Addendum effective as of the date set forth above.

OWNER: MARION COUNTY SALEM AREA MASS TRNNSIT DISTRICT

By: \_\_\_\_\_  
Billy Wasson, Project  
Coordinator

By: \_\_\_\_\_  
John Whittington, Project  
Coordinator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Marion County Legal Counsel

\_\_\_\_\_  
District Legal Counsel

MANAGER: MELVIN MARK DEVELOPMENT COMPANY, an Oregon corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **~~Additional~~ Services**

#### **ONGOING-SCHEDULE**

- Coordinate the development, and maintenance, of a summary construction schedule to be used in establishing the procurement, move-in, and consultant services sequencing.

#### **ONGOING-COST CONTROL**

- Design and maintenance of a variance report for the control of the estimated development cost.
- Control change order processing to minimize disruption in construction scheduling, while working to control impact of total cost.
- Review and approve pay request verifications based on earned-value schedules, stored materials verification, and quantity measurements where appropriate.
- Review Architect's monthly invoices and approve for payment.

#### **ONGOING CONSTRUCTION MANAGEMENT**

- Trouble shoot critical problem areas and work with the construction team to develop recovery plans and their timely implementation.
- Monitoring of quality control system implementation.
- Conduct periodic site walk throughs and progress inspections.
- Review reports generated by Owner's testing and inspection firm.
- Review change proposals for compliance with contract documents.
- Work with the design team and contractor to resolve change order issues.
- Assess and advise on delay claims.
- Assist in identifying owner-generated value engineering items.
- Review costs and benefits of Value Engineering Requests.
- Review product submittals and shop drawings on behalf of the owner with the architect and facilitate the architect's handling of any submittal not in compliance with specifications.
- Manage the design/construction interfaces to minimize or resolve (potential) trouble areas.

- Document project progress.
- Maintain project document files.

#### **COMMISSIONING/TESTING AND BALANCING**

- Assist owners in securing the services (RFP through contract award) of professional commissioning and testing and balancing agents.
- Advise owner during the commissioning and testing and balancing phases.
- Review commissioning and testing and balancing documentation.

#### **BUILDING START-UP**

- Assistance with startup occupancy activities and sequencing with the construction and development team.

#### **CONSTRUCTION CLOSE-OUT**

- Coordination of the punch-out phase, and follow-up with the architect and contractor to review whether punch list items are completed.
- Work with the architect and the general contractor on possibilities of claims for damage to work completed prior to occupancy if Owners occupy the project, or a portion of the project, prior to final completion of the work by the contractor.
- Work with the architect to check that all project closeout items (i.e., bonds, warranties, as-built drawings, etc.) have been received from the contractor prior to final payment as required by the construction contract.

#### **MEETING ATTENDANCE**

- Coordinate construction team meetings to verify and review the status, identify problems, obtain commitments to problem resolution actions, and review near term schedules.
- Conduct the status review (development team) meetings for the owners.
- Keep and update minutes of development team meetings.
- Attend owners' policy board meetings and/or provide staff support as reasonably required.

**From:** John Whittington <whittingtonj@cherriots.org>  
**To:** Craig Lewis <clewis@melvinmark.com>, Billy Wasson ...  
**Date:** Wed, Feb 23, 2000 2:05 PM  
**Subject:** draft fifth addendum

<<MM extension agreement.doc>>

The attached should show strikeouts and underlined additions from the first draft, if such things will carry across in emailed files...If the file doesn't show where the changes have been made, let me know and I will fax you a copy.

I had thought that the agreement would be going to my Board this week (24th), but have learned that it won't be...it will go in March, either on the 9th or the 23rd. Please let me know if the addendum looks acceptable as is, or if you have changes to propose. Thanks...

JW

**AMENDMENT #4  
TO  
PROJECT MANAGEMENT AGREEMENT**

The Project Management Agreement (the "Agreement") between Marion County, Salem Area Mass Transit District, and Melvin Mark Development Company, dated June 1, 1997, as amended by an Addendum to the Project Management Agreement signed by Marion County on January 28, 1998 (the "First Addendum"), as amended by a Second Addendum to Project Management Agreement signed by Marion County on April 15, 1998 (the "Second Addendum"), as amended by Amendment #3 to Contract for Services signed by Marion County on November 4, 1998 (the "Third Addendum"), is amended as follows:

Melvin Mark will arrange for Palmer, Groth and Pietka, Inc. ("PGP") to perform a Highest and Best Use analysis of the north end opportunity site located on the Courthouse Square development block as outlined in the attached letter dated October 4, 1999. Melvin Mark will facilitate the arrangements for PGP to provide the services to the County and the Transit District, but Melvin Mark shall not be responsible for the accuracy or context of PGP's analysis or reports.

Compensation for these additional services will be billed at the direct cost of the work, not to exceed \$12,500.00. Meetings (requiring the attendance of any PGP representative) after the delivery of the Highest and Best Use report will be billed at \$150 per hour. County and Transit Authority will pay for these additional services promptly when due. The expenses of these services shall be reimbursed by Owner but shall not be included in reimbursable expenses for the purpose of calculating the maximum amount of reimbursable expenses as provided in Section 2.1.01 of Exhibit B to the Agreement.

All other provisions of the original agreement remain unchanged and in effect.

Dated this October 15, 1999.

Contractor:

Melvin Mark Development Company,  
an Oregon corporation

Marion County

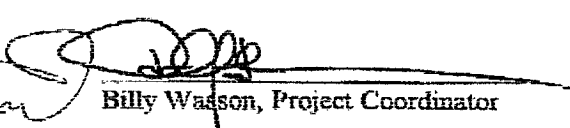
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

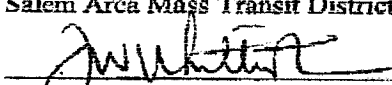
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID#: \_\_\_\_\_

  
Billy Watson, Project Coordinator

Salem Area Mass Transit District

  
John Whittington, Project Coordinator

Date: 10/21/99

Approved as to Form:

Contracts Coordinator

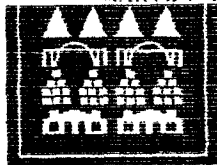
Date: 10/22/99

Marion County Legal Counsel

  
\_\_\_\_\_

Date: 26 October 1999

0207663



**PALMER  
GROTH &  
PIETKA, INC.**  
REAL ESTATE ANALYSTS

09:07:00

October 4, 1999

Mr. Craig Lewis  
Project Manager  
Melvin Mark Companies  
111 SW Columbia, Suite 1380  
Portland, Oregon 97201

RE: **Highest and Best Use - Planned 4-Story Building**  
Chemeketa and High Street - Salem, Oregon

Dear Mr. Lewis:

Thank you for requesting a proposal to prepare a Highest and Best Use study for the captioned property. From our meeting with Mr. Curtis, Mr. Whittington and you on September 23, 1999, in Salem, it is my understanding we would study the following development scenarios:

- Scenario 1 - First floor retail and up to three stories of office space
- Scenario 2 - First floor retail and up to three stories of apartments
- Scenario 3 - Up to four stories of office space
- Scenario 4 - Retail only

The Highest and Best Use study will address the supply and demand components for each of these scenarios, as well as size constraints driven by parking issues. In addition, we will present a hypothetical value for each scenario recognizing a hypothetical building which would be similar to the construction and quality of the Courthouse Square building. The process is to estimate a value for each of the scenarios and deducting the estimated construction cost and absorption cost. This process would result in a residual value for the land. The scenario that indicates the highest land value would represent the highest and best use of the site. We would assume the site would be improved with 56 parking spaces and a concrete floor ready for construction. The estimated cost for those improvements are \$1,000,000 and those costs would not be deducted to determine the site value.

SUITE 200 • 110 SW YAMHILL STREET • PORTLAND, OREGON 97204 • (503) 226-0983 • FAX (503) 273-1273  
WITH OFFICES IN  
VANCOUVER, SEATTLE, SACRAMENTO AND SALEM

DONALD R. PALMER, MAI  
DAVID W. GROTH, MAI  
DAVID E. PIETKA, MAI

DAVID T. HILL  
PHILIP L. STOFFEN, MAI  
CHRISTOPHER K. MONGER, MAI

CHRISTOPHER VATERLAUS  
MARK M. LAWVILL, MAI  
TIMOTHY E. WRIGHT, MAI

SPENCE POWELL, MAI  
BRIAN L. KELLEY, MAI  
TODUS LIEBER, MAI

02/29/00 09:24 FAX 5033734460

.00

MARTON CO CFC

06

Mr. Craig Lewis  
Melvin Mark Companies

October 4, 1999  
Page 2

Dan Orman and Spence Powell, MAI, would be assisting me with this project. Dan specializes in the appraisals of office buildings and Spence is knowledgeable with retail, office, and the apartment market.

This assignment would be phased, with the first phase arriving at preliminary values for each scenario and a meeting with Mr. Curtis, Mr. Whittington, and you to discuss our findings. Our projected delivery date for this work would be three to four weeks from your authorization to proceed. The final phase would be the preparation of the document.

The estimated fee for Phase 1 is time and charges to \$10,000 and the cost to prepare the written document is time and charges to \$2,500. Additional meetings would be billed at \$150.00 per hour. If you have any questions regarding this proposal, please do not hesitate to call. We look forward to working with you on this exciting project.

Sincerely,

**PALMER, GROTH & PIETKA, INC.**

*Donald R. Palmer*

Donald R. Palmer, MAI

DRP:cc  
LewisPsa.wpd

PALMER, GROTH & PIETKA, INC.

02/29/00 08:27 FAX 588 7951



12

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# ADDENDUM TO PROJECT MANAGEMENT AGREEMENT

DATED: January \_\_, 1998

BETWEEN: MARION COUNTY, OREGON, a political subdivision of the State of Oregon ("County") and SALEM AREA MASS TRANSIT DISTRICT, a political subdivision of the State of Oregon

(together, "Owner")

AND: MELVIN MARK DEVELOPMENT COMPANY, an Oregon corporation

*Amendment #1*

Owner and Manager are parties to a Project Management Agreement entered into as a result of a bid accepted by C Manager in response to Owner's request for proposal dated May 8, 1997 (the "Agreement") for the Courthouse Square project in Salem, Oregon. While undertaking an project documents in effect as of June 1, 1997, the parties determined that a substantial reconsideration of the project design, budget and construction cost estimates was necessary. Owner requested that Manager undertake additional services, and Manager agreed to undertake such additional services.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Addendum to Project Management Agreement (the "Addendum"), the parties agree to modify the Agreement as follows:

1. Additional Services. Effective as of June 1, 1997, Owner engages Manager to provide the following preconstruction services which are in addition to those described in the Agreement: attend original design meetings, assist and advise Owner during the demolition phase, advise Owner on the building design and schedule, consult with Owner on appropriate predesign site investigations, assist Owner in developing agreements with the contractor, assist in refining original design to achieve parking and building efficiencies, consult with Owner on parking needs and alternatives, study feasibility of expanding existing courthouse garage, lead and advise development team (Owner, the contractor and the architect) through project redesign, attend and provide advice during financing meetings with Owner, bond counsel, and financial advisors, assemble "new design" budget and assist in determining current financial status, assemble data and run ARGUS financial models to review optimal project design, attend Transit, County and public forum meetings in a advisory capacity, draft the requests for proposals for the "north end" retail development, advise Owner during the retail or mixed used developer selection process, assist Owner with obtaining from third parties independent cost verifications covering various project components, attend Special Project Oversight Committee meetings on an as-needed basis, assist Owner with the design review process, and assist Owner with developing and reviewing bid documents.

2. Term. The term of this Addendum and the additional services provided by Manager pursuant to this Addendum shall commence on June 1, 1997, and shall terminate on May 31, 1998.

3. Payment for Additional Services. County agrees to pay Manager \$225,000.00 for the additional services described in Section 1 of this Addendum (the "Additional Fee"). Payment of the Additional Fee by County shall be made as follows: \$125,000.00 shall be paid immediately. The remaining balance of the Additional Fee shall be paid in four equal monthly installments in the amount of \$25,000.00 each on March 1, 1998, April 1, 1998, and May 1, 1998, and June 1, 1998.

4. Reimbursement for Expenses Incurred. County shall reimburse Manager for reimbursable expenses incurred in connection with providing the additional services under this Addendum, within 30 days after Manager's billing therefor, which billing shall be given no more frequently than on a monthly basis, in an amount not to exceed \$10,000 in the aggregate. These reimbursable expenses are in addition to those described in Section 2.2 of Schedule 1, which is attached to the Agreement, and which are capped at \$25,000.

5. Termination. Owner may terminate this Addendum at any time with an effective date of May 31, 1998 (instead of 60 days' prior written notice, as provided in Section 1.3.4 of the Agreement).

6. Effect of Addendum. The Agreement is modified only as set forth in this Addendum. Except as expressly modified, the Agreement remains in full force and effect. This Addendum and compliance with the obligations in this Addendum shall be subject to all the terms and conditions of the Agreement as if fully set forth in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum effective as of June 1, 1997.

OWNER: MARION COUNTY  
BOARD OF COMMISSIONERS

SALEM AREA  
MASS TRANSIT DISTRICT

Randall Frank  
Vice-Chair 1/28/98

RGW  
4-16-98

Gary Keer  
Commissioner  
Commissioner

MANAGER: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation

By: Daniel D. Peterson  
Its: 2/4/98

**From:** ELYN LYON  
**To:** CHlavinka  
**Date:** 6/17/98 2:36pm  
**Subject:** Melvin Mark Contract

Do you agree with the following data:

Base agreement Fees \$437,500 with  
reimbursables not to exceed \$25,000.  
Addendum for an additional \$225,000  
with another ~~\$25,000~~ reimbursable  
allowance. <sup>10,000</sup>

I will be able to encumber for FY 1998/99  
the difference between what \$662,500 for  
management fees and \$50,000

reimbursables and actual expenditures.

To date I've paid \$225,000 in fees and  
\$6,171 in reimbursables.

Are we needing to have admendments to  
extend the dates on these contracts  
because the project date has moved  
forward?

19,886.35 x 22 mos.

Date 6/1/98 - 3/31/2000

> no

# CONTRACT REVIEW SHEET

Person Sending: <u>Wasson</u>	Department Name: <u>Courthouse Square</u>
Date Sent: <u>10/25/99</u>	

The attached: (CIRCLE ONE)

Contract Amendment # 4 Grant Lease Intergov't Agreement

INCOMING FUNDS? YES NO (CIRCLE ONE)

Contractors Name: <u>Melvin Mark</u>	Approved at Board Session Date: <u>11-2-99</u> <u>Melvin Mark</u> Chairman
Date From:	Date To:

Amount of Contract or Amendment: \$12,500.00 + meetings

If an Amendment, New Contract Total =

Certificates of Insurance Attached:	Liability (circle one) Yes No	Workers Comp (circle one) Yes No	If no insurance attached, why not? <u>on file</u>
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Process taken to select contractor:

Verbal quote: \_\_\_\_\_ Written quote: \_\_\_\_\_ RFP: \_\_\_\_\_ Competitive Bid: \_\_\_\_\_ Renewal: \_\_\_\_\_

(Attach copy for reference)

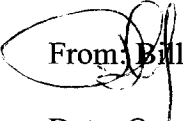
Description of Contract Services:

Arrange for a Highest & Best Use analysis of north end opportunity site

For Support Services Use	
Date Contract Received: <u>10/22/99</u>	Date Scheduled on BOC Agenda: <u>Planning 10/28/99</u>
Authorization for Health Administration to sign on behalf of BOC:  yes <u>(no)</u>	Additional Comments: _____ _____ _____
Staff Review Signatures:	
<u>Peggy Hutchell</u> Contracts Coordinator	<u>10/25/99</u> date
<u>J. Allen Strickland</u> Legal Counsel	<u>24 October 1999</u> date
Risk Manager	date

Date: \_\_\_\_\_  
Returned to Department/ \_\_\_\_\_ for \_\_\_\_\_ signatures.

To: Marion County Board of Commissioners

From:  Billy F. Wasson, Project Manager

Date: October 25, 1999

Re: Amendment # 4 to Melvin Mark Agreement

Recommendation:

Approval of the attached amendment to Melvin Mark's Contract.

Background:

At a previous joint board meeting the request was made that we get an analysis done on the North block project on its "highest and best use". The Board's need this analysis to assist in the decision making on how to structure and review any proposals from developers on the project.

Staff concluded that Melvin Mark was in the best position to select and negotiate an agreement with a subcontractor to get this analysis completed. The result has been the selection of Don Palmer, of Palmer, Groth and Pietka, to do the work. This amendment will provide for the compensation to Melvin Mark for the work. Please note that Melvin Mark has not chosen to take any markup for the work. Don Palmer has history with the project and did a rental analysis in 1998 at the request of the then County Administrator for the Special Oversight Committee.

I encourage your ratification of this amendment.

Thank you.

AMENDMENT #4  
TO  
PROJECT MANAGEMENT AGREEMENT

The Project Management Agreement (the "Agreement") between Marion County, Salem Area Mass Transit District, and Melvin Mark Development Company, dated June 1, 1997, as amended by an Addendum to the Project Management Agreement signed by Marion County on January 28, 1998 (the "First Addendum"), as amended by a Second Addendum to Project Management Agreement signed by Marion County on April 15, 1998 (the "Second Addendum"), as amended by Amendment #3 to Contract for Services signed by Marion County on November 4, 1998 (the "Third Addendum"), is amended as follows:

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Compensation for these additional services will be billed at the direct cost of the work, not to exceed \$12,500.00. Meetings (requiring the attendance of any PGP representative) after the delivery of the Highest and Best Use report will be billed at \$150 per hour. County and Transit Authority will pay for these additional services promptly when due. The expenses of these services shall be reimbursed by Owner but shall not be included in reimbursable expenses for the purpose of calculating the maximum amount of reimbursable expenses as provided in Section 2.1.01 of Exhibit B to the Agreement.

All other provisions of the original agreement remain unchanged and in effect.

Dated this October 15, 1999.

Contractor:

Melvin Mark Development Company,  
an Oregon corporation

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID#: \_\_\_\_\_

Marion County

\_\_\_\_\_  
Billy Wasson, Project Coordinator

Salem Area Mass Transit District

\_\_\_\_\_  
John Whittington, Project Coordinator

Date: 10/21/99

Approved as to Form:

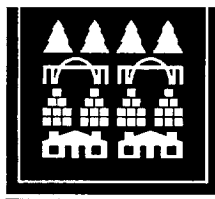
Contracts Coordinator

Date: 10/22/99

Marion County Legal Counsel

Date: 24 October 1999

**RECEIVED**  
OCT 22 1999  
MARION COUNTY SUPPORT  
SERVICES DEPARTMENT



PALMER  
GROTH &  
PIETKA INC  
REAL ESTATE ANALYSTS

RECEIVED  
OCT 05 1999  
RECEIVED

October 4, 1999

Mr. Craig Lewis  
Project Manager  
Melvin Mark Companies  
111 SW Columbia, Suite 1380  
Portland, Oregon 97201

**RE: Highest and Best Use - Planned 4-Story Building**  
Chemeketa and High Street - Salem, Oregon

Dear Mr. Lewis:

Thank you for requesting a proposal to prepare a Highest and Best Use study for the captioned property. From our meeting with Mr. Curtis, Mr. Whittington and you on September 23, 1999, in Salem, it is my understanding we would study the following development scenarios:

- Scenario 1 - First floor retail and up to three stores of office space
- Scenario 2 - First floor retail and up to three stories of apartments
- Scenario 3 - Up to four stories of office space
- Scenario 4 - Retail only

The Highest and Best Use study will address the supply and demand components for each of these scenarios, as well as size constraints driven by parking issues. In addition, we will present a hypothetical value for each scenario recognizing a hypothetical building which would be similar to the construction and quality of the Courthouse Square building. The process is to estimate a value for each of the scenarios and deducting the estimated construction cost and absorption cost. This process would result in a residual value for the land. The scenario that indicates the highest land value would represent the highest and best use of the site. We would assume the site would be improved with 56 parking spaces and a concrete floor ready for construction. The estimated cost for those improvements are \$1,000,000 and those costs would not be deducted to determine the site value.

SUITE 200 • 110 SW YAMHILL STREET • PORTLAND, OREGON 97204 • (503) 226-0983 • FAX (503) 273-4273

WITH OFFICES IN

VANCOUVER, SEATTLE, SACRAMENTO AND SALEM

DONALD R. PALMER, MAI  
DAVID W. GROTH, MAI  
DAVID E. PIETKA, MAI

DAVID T. HILL  
PHILIP L. STEFFEN, MAI  
CHRISTOPHER K. MONGER, MAI

CHRISTOPHER VATERLAUS  
MARK M. LAWVILL, MAI  
TIMOTHY E. WRIGHT, MAI

SPENCE POWELL, MAI  
BRIAN L. KELLEY, MAI  
TODD S. LIEBOW, MAI



Mr. Craig Lewis  
Melvin Mark Companies

October 4, 1999  
Page 2


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Sincerely,

**PALMER, GROTH & PIETKA, INC.**

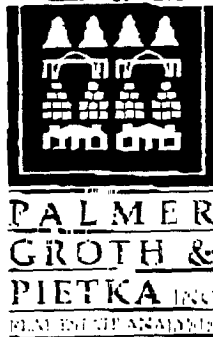
A handwritten signature in cursive script that reads "Donald R. Palmer". The signature is written in dark ink and is positioned above the printed name.

Donald R. Palmer, MAI

DRP:ee  
LewisPsa.wpd

10/12/99 10:25 ☎ 503 588 5237  
10/11/99 MON 14:34 FAX 503 223 4606

MARION CO. COM. →→→ PERSONNEL HUMRES 003/004  
MELVIN MARK COMPANIES 003



October 4, 1999

Mr. Craig Lewis  
Project Manager  
Melvin Mark Companies  
111 SW Columbia, Suite 1380  
Portland, Oregon 97201

**RE: Highest and Best Use - Planned 4-Story Building**  
Chemeketa and High Street - Salem, Oregon

Dear Mr. Lewis:

Thank you for requesting a proposal to prepare a Highest and Best Use study for the captioned property. From our meeting with Mr. Curtis, Mr. Whittington and you on September 23, 1999, in Salem, it is my understanding we would study the following development scenarios:

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- Scenario 4 - Retail only

The Highest and Best Use study will address the supply and demand components for each of these scenarios, as well as size constraints driven by parking issues. In addition, we will present a hypothetical value for each scenario recognizing a hypothetical building which would be similar to the construction and quality of the Courthouse Square building. The process is to estimate a value for each of the scenarios and deducting the estimated construction cost and absorption cost. This process would result in a residual value for the land. The scenario that indicates the highest land value would represent the highest and best use of the site. We would assume the site would be improved with 56 parking spaces and a concrete floor ready for construction. The estimated cost for those improvements are \$1,000,000 and those costs would not be deducted to determine the site value.

SUITE 200 • 110 SW YAMHILL STREET • PORTLAND, OREGON 97201 • (503) 226-0983 • FAX (503) 273-4273  
WITH OFFICES IN  
VANCOUVER, SEATTLE, SACRAMENTO AND SALEM

DONALD R. PALMER, MAI  
DAVID W. GROTH, MAI  
DAVID E. PIETKA, MAI

DAVID A. HILL  
PHILIP L. STRIPPEN, MAI  
CHRISTOPHER K. MUNKER, MAI

CHRISTOPHER VATERGAUS  
MARK M. LAYSTILL, MAI  
TIMOTHY E. WOODS, MAI

SPENCER L. POWELL, MAI  
BRIAN L. KELLEY, MAI

Mr. Craig Lewis  
Melvin Mark Companies

October 4, 1999  
Page 2


Dan Orman and Spence Powell, MAI, would be assisting me with this project. Dan specializes in the appraisals of office buildings and Spence is knowledgeable with retail, office, and the apartment market.

This assignment would be phased, with the first phase arriving at preliminary values for each scenario and a meeting with Mr. Curtis, Mr. Whittington, and you to discuss our findings. Our projected delivery date for this work would be three to four weeks from your authorization to proceed. The final phase would be the preparation of the document.

The estimated fee for Phase 1 is time and charges to \$10,000 and the cost to prepare the written document is time and charges to \$2,500. Additional meetings would be billed at \$150.00 per hour. If you have any questions regarding this proposal, please do not hesitate to call. We look forward to working with you on this exciting project.

Sincerely,

PALMER, GROTH & PIETKA, INC.



Donald R. Palmer, MAI

DRP:ee  
LewisPsa.wpd

# CONTRACT REVIEW SHEET

Person Sending: <u>Billy Wesson</u>	Department Name: <u>General Service</u>
Date Sent: <u>4/8/98</u>	

The attached: (CIRCLE ONE)  
 Contract      Amendment # X 2      Grant      Lease

INCOMING FUNDS? YES (NO) (CIRCLE ONE)

If incoming funds you must attach a Revenue Management Sheet

Contractors Name: <u>Melvin Mark Companies</u>	
Date From: <u>6/1/97</u>	Date To:
Amount of Contract or Amendment:	
If an Amendment, New Contract Total = \$n/a	
Certificates of Insurance Attached:	Liability (circle one) Yes No
	Workers Comp (circle one) Yes No
If no insurance attached, why not?	

## Description of Contract Services:

Amend termination to 30 day period between 4/1/98 - 4/30/98 only.

For Risk Management Use	
Date Risk Received: <u>4/8/98</u>	Date Scheduled on BOC Agenda
Authorization for Health Administration to sign on behalf of BOC: yes (no)	Additional Comments:
Staff Review Signatures:	
<u>[Signature]</u> <u>4/8/98</u> Risk Management date	<u>[Signature]</u> <u>9 April 1998</u> Fiscal Services date
<u>[Signature]</u> <u>                    </u> General Services date	<u>[Signature]</u> <u>                    </u> Legal Counsel date

Date: 4/30  
 Returned to Department/ Corrections for                      signatures.  
 Copy to Fiscal Services                     

Reveiw.CON 1/97

Rachel Champagne for Craig R. Lewis

MELVIN MARK COMPANIES

Enclosures  
 CRL/rec

CC: File

**SECOND ADDENDUM TO PROJECT MANAGEMENT AGREEMENT**

DATED: April 2, 1998

BETWEEN: MARION COUNTY, OREGON, a political  
Subdivision of the State of Oregon and  
SALEM AREA MASS TRANSIT DISTRICT,  
a political subdivision of the State of Oregon (together, "Owner")

AND: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation ("Manager")

Owner and Manager are parties to a Project Management Agreement dated June 1, 1997 (the "Agreement"), as amended by an Addendum to Project Management Agreement signed by Marion County on January 28, 1998 (the "First Addendum").

The parties agree as follows:

1. Interim Agreement Regarding Termination. For the period of time commencing on April 1, 1998, and ending on April 30, 1998, Owner may terminate the Agreement upon 30 days' prior written notice instead of 60 days' prior written notice, as required by Section 1.3.4 of the Agreement.

2. Effect of Second Addendum. The Agreement is modified only as set forth in this Second Addendum. Except as expressly modified, the Agreement remains in full force and effect. The First Addendum is not amended in any respect and remains in full force and effect.

IN WITNESS THEREOF, the parties have executed this Second Addendum effective as of the date set forth above.

OWNER: MARION COUNTY  
BOARD OF COMMISSIONERS

SALEM AREA  
MASS TRANSIT DISTRICT

Mary Pearson 4-15-98  
Chair  
Randall Franke  
Commissioner  
Don [Signature]  
Commissioner

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MANAGER: MELVIN MARK DEVELOPMENT COMPANY,  
An Oregon Corporation

Approved as to form

[Signature] 4/8/98  
County Contracts Coordinator

By: \_\_\_\_\_

Its: \_\_\_\_\_

Marion County Legal Counsel

[Signature]  
Approved as to form

## SECOND ADDENDUM TO PROJECT MANAGEMENT AGREEMENT

DATED: April 2, 1998

BETWEEN: MARION COUNTY, OREGON, a political  
Subdivision of the State of Oregon and  
SALEM AREA MASS TRANSIT DISTRICT,  
a political subdivision of the State of Oregon (together, "Owner")

AND: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation ("Manager")

Owner and Manager are parties to a Project Management Agreement dated June 1, 1997 (the "Agreement"), as amended by an Addendum to Project Management Agreement signed by Marion County on January 28, 1998 (the "First Addendum").

The parties agree as follows:

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2. Effect of Second Addendum. The Agreement is modified only as set forth in this Second Addendum. Except as expressly modified, the Agreement remains in full force and effect. The First Addendum is not amended in any respect and remains in full force and effect.

IN WITNESS THEREOF, the parties have executed this Second Addendum effective as of the date set forth above.

OWNER: MARION COUNTY  
BOARD OF COMMISSIONERS

SALEM AREA  
MASS TRANSIT DISTRICT

Mary Kearns 4/5/98  
Chair

RJW

Sandra Franke

Commissioner

[Signature]  
Commissioner

MANAGER: MELVIN MARK DEVELOPMENT COMPANY,  
An Oregon Corporation

Approved as to form

By: [Signature]

[Signature] 4/8/98  
County Contracts Coordinator

Its: President

Marion County Legal Counsel

[Signature]  
Approved as to form

## CONTRACT REVIEW SHEET

Person Sending: Billy Wasson	Department Name: Courthouse Square
Date Sent: 11/12/98	

**The attached:** (CIRCLE ONE)  
 Contract      Amendment # 3      Grant      Lease

INCOMING FUNDS? YES (NO) (CIRCLE ONE)

If incoming funds you must attach a Revenue Management Sheet

<b>Contractors Name:</b>	Melvin Mark Companies		
<b>Date From:</b>	<b>Date To:</b>		
Amount of Contract or Amendment: Amendment compensation not to exceed \$1,500.00			
If an Amendment, New Contract Total = \$n/a			
Certificates of Insurance Attached:	Liability (circle one)  Yes No	Workers Comp (circle one)  Yes No	If no insurance attached, why not?  <i>on file</i>

**Process taken to select contractor:**

Verbal quote: \_\_\_\_\_ Written quote: \_\_\_\_\_ RFP: \_\_\_\_\_ Competitive Bid: \_\_\_\_\_ Renewal: \_\_\_\_\_

(Attach copy for reference)

**Description of Contract Services:**

Prepare RFP for a housing market survey for north end of senator block

For Risk Management Use			
Date Risk Received: <u>11/12/98</u>	Date Scheduled on BOC Agenda		
Authorization for Health Administration to sign on behalf of BOC:  yes <u>(no)</u>	Additional Comments: _____		
	_____		
	_____		
Staff Review Signatures:			
Risk Management	date	Fiscal Services	date
General Services	date	Legal Counsel	date

Date: \_\_\_\_\_  
 Returned to Department/ \_\_\_\_\_ for \_\_\_\_\_ signatures.      Copy to Fiscal Services \_\_\_\_\_

**AMENDMENT # 3**  
**TO**  
**CONTRACT FOR SERVICES**

The Contract for Services between Marion County and **Melvin Mark Companies** dated June 1, 1997, as amended by an addendum to the Project Management Agreement signed by Marion County on January 28, 1998 (the "First Addendum"), as amended by an addendum to Property Management Agreement signed by Marion County on April 15, 1998 ( the "Second Addendum"), is amended as follows:

Melvin Mark will take primary responsibility for the preparation of an RFP for services to conduct a housing market survey for the north end opportunity site as outlined in the attached letter of October 27, 1998, signed by Marion County, Salem Area Mass Transit and Melvin Mark Companies.

Compensation for these addition services will be billed on a time and materials basis, not to exceed \$1,500.00.

All other provisions of the original agreement remain unchanged and in effect.

Signed this day of November 4, 1998.

**Contractor:**

Signature: 

Name: Craig R. Lewis

Title: Project Manager

Date: 11/5/98

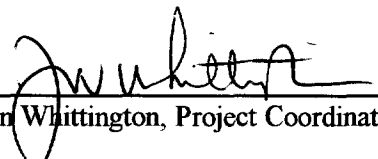
Tax ID# \_\_\_\_\_

Date: \_\_\_\_\_

Marion County

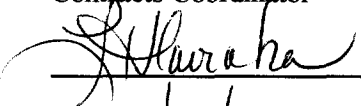
  
Billy Wasson, Project Coordinator

Salem Area Mass Transit District

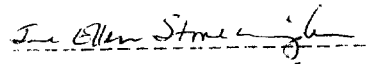
  
John Whittington, Project Coordinator

Approved as to Form:

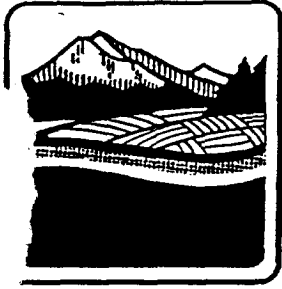
Contracts Coordinator

  
Date 11/30/98

Marion County Legal Counsel

  
Approved as to form





***Marion County***  
**OREGON**  
**OFFICE OF LEGAL COUNSEL**

Approved at Board Session  
Date: 10-28-98  
Mary Pearmine  
Chairman

**LEGAL COUNSEL**  
Michael J. Hansen

October 27, 1998

**BOARD OF COMMISSIONERS**  
Mary B. Pearmine  
Randall Franke  
Don Wyant, Jr.

TO: Board of Commissioners

**ASSISTANT LEGAL COUNSEL**  
Bruce T. Armstrong  
Timothy T.A. Jensen  
Gloria M. Roy  
Jane Ellen Stonecipher

FROM: Mike Hansen, Legal Counsel

RE: Intergovernmental Development Agreement  
Courthouse Square

Pursuant to Marion County Resolution 97-53R, dated September 24, 1997, and Transit District Resolution 97-21, dated September 25, 1997, both Marion County and the Transit District have authorized the Intergovernmental Development Agreement. At this time, the Agreement is before you in final form for your consideration. There are no fundamental changes to the Agreement. However, as the Courthouse Square Project has been refined, adjustments have been made. This memorandum will provide you with an overview of the Agreement.

**Intergovernmental Development Agreement**

The Agreement defines the project facilities, which consist of a five story office building, an underground parking garage of 258 total spaces, a transit mall, and a joint hearing room to be owned as a condominium by Marion County and the Transit District. In addition to this a portion of the property approximately 50 feet deep along the Chemeketa Street property line will be offered for private development.

The entire project will sit on the Senator Block, which is jointly owned by Marion County and the Transit District as tenants in common.

The duty of the parties to move forward with the Courthouse Square Project depends upon satisfaction of the conditions precedent by February 1, 1999. These conditions precedent are:

1. That firm bids are obtained which allow the parties to construct the project for their defined respective shares: \$24,100,000 for the county and \$9,860,000 for the district; and
2. That each party secure financing for its respective share: \$9,860,000 for the district, and financing for the county of not more than \$1,580,000 principal and interest payment per year for 25 years.

If these conditions precedent cannot be satisfied, either party may terminate the agreement. Upon termination, either party may elect to partition the property, buy the other party's interest in the land for fair market value, or lease the other party's interest in the land. Upon termination the project will be stopped, and the parties will each pay their respective share of the project costs incurred.

After the conditions precedent have been satisfied, neither party may terminate the agreement. To do so would be a default. In the case of default, the sole remedy of either party is money damages.

The parties will proceed with the project through their Project Coordinators. One Project Coordinator is appointed by each party. The Project Coordinators must both agree for any decision to be made. In the case of dispute, the matter will be addressed to the chairs of governing bodies. If the chairs cannot agree, the full governing bodies will meet and decide the matter.

The Project Coordinators are delegated responsibility to:

- \*Approve all contracts, subject to competitive procurement requirements
- \*Approve the project budget, the final construction plans and specifications
- \*Approve the bids, the general construction contract, and the final budget
- \*Recompute the respective shares based on the bids and adjustments made by the parties
- \*Approve all change orders
- \*Approve all disbursements
- \*Resolve construction claims

A special provision allows the county to pull its own wiring for telephone, fax and electronic data, and to do the same for transit at reasonable cost.

A special provision sets the parties' share for streetscape elements not funded by the city, but which the parties elect to build. The respective shares are 68.71% county and 31.29 % transit, based on ownership interest in the land.

The Agreement allows the parties to encumber their interest in the project for purposes of construction financing.

All other agreements are attached as exhibits to the Intergovernmental Development Agreement.

## **Exhibits A and B--Condominium Declaration and Bylaws**

Marion County and the Transit District will own the project as a condominium. The owner of a condominium unit may lease, sell or encumber that unit.

The units of the conominium will be:

- \*County Office Unit (101,722 square feet)
- \*Transit Office Unit (25,548 square feet)
- \*Joint Hearing Room (4,760 square feet)
- \*Transit Mall Unit (66,824 square feet)
- \*County Parking Unit (218 spaces)
- \*Transit Parking Unit (40 spaces)

The units will be located on a portion of the Senator Block, which is owned by the county and transit. The condominium will not include that portion of the Senator Block set aside for the private development. Nor will the condominium include streetscape improvements located within public right-of-way.

Each unit will own an undivided interest in the common elements. The common elements include those items necessary for the use and enjoyment of each unit, such as stairs, elevators, structural components, HVAC, ducts, lobbies, hallways, the plaza, etc.

Each unit will share in the cost of maintenance, repair and replacement of the common elements as follows:

- \*Office Units will share in the cost of all common elements, except as assigned specifically to another unit. Transit's share is \$20.07%. County's share is 79.93%. Shares based on square feet of useable space. Such expenses will include general administrative expenses, operational expenses and the cost of insurance.
- \*Hearing Room Unit owners will share costs of the Hearing Room 50-50. No other common element costs are assigned to this unit.
- \*Mall Unit owner will pay full costs for that unit, including normal wear and tear to the structural slab supporting the unit. Structural repairs to the slab will be shared 50-50 with the Parking Units.
- \*Parking Unit owners will pay the costs for maintenance of the ramps and driveways associated with the parking garage. Transit's share is 15.5%. County's share is 84.5%. Shares based on number of parking spaces. Maintenance includes normal wear and tear to the structural slab serving as the ceiling for the parking garage. Parking Unit owners will share 50% of the cost for structural repairs to the slab.

Each unit owner may vote according to its share of the common elements. So long as the county and the district are the sole unit owners, all decisions will be made by unanimous vote. If any unit is owned by a third party, decisions will be made by 75% majority. This protects the controlling interest of the public parties in the project.

The condominium will be governed by an Association. Each unit owner is a member of the association. The county and the district will appoint a representative. The association will set the budget for repair, maintenance and replacement of the condominium common elements, maintaining insurance of condominium, including all improvements; will provide for the maintenance; and will conduct all official business of the Association, including amendments to the declaration and bylaws.

Use of the office units is for government and private leased office space and transit related facilities for the transit office unit. Use of the mall is limited to transit related purposes.

The condominium documents protect the ability of the parties to pledge their unit ownerships as security for financing the project, and protect against any amendments to the declaration and bylaws that would conflict with that security.

#### **Exhibit C--North Pad Ground Lease**

The lease term is 75 years. The county and the district are the owners of the land, which is roughly a pad of land running the length of Chemeketa Street and running 50 feet deep. Rent is set at fair market value for the land, adjusted periodically. The uses are retail, office, residential, hotel and other transit related uses. The lease will include easements, if needed, for underground parking development and for an overhang to allow upper stories of any multi-story building to be wider than the footprint of the building. Upon expiration of the lease, the improvements belong to the land owners. Provision is made for leasehold mortgages in order to allow a developer access to funds for construction.

#### **Exhibit D--Respective Shares**

This exhibit is a cost allocation formula developed by the parties to set out how costs will be shared for construction and other purposes part of the project. The construction cost formula is subject to adjustment as provided in section 1.40 of the development agreement.

Land costs are divided as follows: 31.29% Transit, and 68.71% County.

Construction costs are divided as follows: 31.42% Transit, and 68.58% County.

Special services, which the parties may require, will be negotiated.

Change orders will be process by the Project Coordinators as provided in the development agreement.

The estimated construction cost is \$22,128,163, including \$1,691,150 for streetscape.

#### **Exhibit E--Schedule of Performance**

The schedule covers the main activities, such as design, bidding, financing, construction

and development of the north pad. These activities will occur between April, 1998 and June, 2001.

#### **Exhibit F--Continuing Party Ground Lease**

This lease will come into play only if either the county or the district terminates the agreement because the conditions precedent cannot be satisfied. In that event either party has 90 days to exercise the option of leasing the entire Senator Block from the two real property owners for a term of 75 years.

The lease will include the preliminary plan for a project, which can include government or private offices, retail stores, professional offices, hotels, residential uses, and transit related uses.

The leasee will have one year to commence construction of the project, and 18 months to complete the project. No rent will be paid for the ground until the project is completed.- Thereafter, rent will be paid at the fair market value on the land.

The leasee can mortgage its interest as leasee for purposes of financing the project. The leasee can also assign or sell its interest in the project once it is done. Before that time, the leasee can sublet all or part of its interest. This allows the leasee to undertake a joint development or to rent space.

The leasee will be full and solely responsible for taxes, assessments, liability insurance, and other expenses incident to control of the land. The landlord has no duties and will be fully indemnified.

Upon termination of the lease the improvements belong to the lessor.

#### **Exhibit G--FTA Contract Clauses**

Because the county and the district are involved in a joint project funded in part by an FTA grant, these clauses are added as a condition of the grant.

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## RESOLUTION NO. 98-37R

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**RESOLUTION AUTHORIZING THE COUNTY TO BORROW MONEY TO PROVIDE FINANCING FOR THE COUNTY'S SHARE OF THE COSTS OF THE COURTHOUSE SQUARE PROJECT; AND AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND OTHER MATTERS PERTAINING THERETO.**

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**Recitals:**

- A. In order to provide the facilities needed by Marion County, Oregon (the "County") to conduct its governmental operations, the County has entered into an Intergovernmental Development Agreement with the Salem Area Mass Transit District (the "Transit District") providing for the development of a mixed use facility to be located on a portion of Block 5 in the City of Salem, Oregon (the "Site"). The Site is currently owned by the County and the Transit District as tenants in common. The development to take place on the Site will consist of: (a) a transit center for use by the Transit District in its operations; (b) administrative offices for use by the Transit District; (c) administrative offices for use by the County; (d) certain commercial retail facilities for lease or sale to third parties; and (d) related parking facilities (collectively, the "Project"). Upon construction of the Project, the County and the Transit District will own their respective interests in the Project improvements as condominium units.
- B. In order to provide the funds needed to pay the County's share of the costs of the Project, the County desires to exercise the power granted to it under ORS 271.390 by entering into a financing agreement as provided herein.

**BE IT RESOLVED BY THE COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:**

**SECTION 1. AUTHORIZATION OF FINANCING; COUNTY'S OBLIGATION SUBJECT TO ANNUAL APPROPRIATION.** Reference is made to the form of Financing and Trust Agreement that has been placed on file with the County Clerk in connection with the adoption of this resolution (the "Agreement"). All terms used in this resolution and not otherwise defined herein shall have the respective meanings assigned thereto in the Agreement.

In the exercise of the authority conferred upon the County pursuant to ORS 271.390 and subject to the limitations set forth herein, the County is hereby authorized to finance its share of the costs of the Project by entering into the Agreement pursuant to which the County shall borrow a sum not to exceed Twenty Two million dollars (\$22,000,000.00). The funds needed for such financing shall be raised by means of the execution and delivery of certificates of participation as provided in the Agreement (the "1998 Certificates"), which 1998 Certificates shall evidence undivided interests in the County's obligation to make financing payments pursuant to the Agreement (the "1998 Financing Payments").

Notwithstanding anything expressed or implied herein or in the Certificates or the Agreement to the contrary, the County's obligation to make the Financing Payments due in each Fiscal Year shall be and remain subject to the County's having duly budgeted and appropriated, in accordance with applicable law, funds for the purpose of paying such Financing Payments.

**SECTION 2. AUTHORITY TO APPOINT TRUSTEE; SECURITY FOR THE COUNTY'S OBLIGATION.** The County has heretofore solicited proposals from corporate trustees to act as trustee under the Agreement (the "Trustee"). The Marion County Courthouse Square Coordinator (the "Coordinator") is hereby authorized to evaluate such proposals and select and appoint as Trustee the entity submitting the proposal that the Coordinator determines best meets the needs of the County.

As security for the County's obligation to make the Financing Payments due under the Agreement, and also to secure the repayment of the moneys loaned to the County pursuant to the Agreement in the case of an occurrence of a Nonappropriation Event:

(A) the County shall grant to the Trustee, a mortgage on the County's undivided interest in the Site, which mortgage shall be granted pursuant to the Site Mortgage, which Site Mortgage shall continue in effect until such time as the Condominium Mortgage is executed and delivered by the County to the Trustee in lieu of such Site Mortgage;

(B) at such time as the County's condominium interests in the Project come into existence, the County shall grant to the Trustee a mortgage on the County's interest in the condominium units in the Project, which mortgage shall be granted pursuant to the Condominium Mortgage (as more particularly described below); *provided that* concurrently with the execution and delivery of the Condominium Mortgage by the County to the Trustee, the Trustee shall release and discharge the Site Mortgage; and

(C) in accordance with the terms and conditions set forth in the Financing Agreement, the County shall pledge its right, title and interest to and in:

(1) all Financing Payments paid by the County to the Trustee under the Agreement;

(2) all moneys and investments in the Certificate Payment Fund, the Project Fund and any other fund established and held by the Trustee under any Supplemental Agreement, including any investments made therefrom and investment income derived therefrom;

(3) each Credit Facility and all amounts drawn or paid thereunder; and

(4) all of the proceeds of the foregoing, including without limitation investment income derived therefrom.

**SECTION 3. SALE OF 1998 CERTIFICATES; APPROVAL OF FINANCING DOCUMENTS.** The 1998 Certificates shall be sold in a negotiated sale to Prudential Securities Incorporated, as senior managing underwriter (the "Underwriters' Representative").

The Coordinator is hereby authorized, empowered and directed to:

(1) cause to be prepared a preliminary official statement in substantially final form describing the 1998 Certificates and setting forth such information concerning the County, the Project and the 1998 Certificates as may be necessary or appropriate in order to disclose all material information which a prospective investor would need in order to make an informed decision with respect to an investment in the 1998 Certificates;

(2) establish:

(A) the aggregate principal amount of the 1998 Certificates, the principal amount of the 1998 Certificates to mature in each year, and the principal amounts of the 1998 Certificates to be issued as serial certificates and as term certificates; *provided that* in no event shall the 1998 Certificates mature over a term in excess of twenty-five and one-half years from the date of issuance thereof;

(B) with respect to the 1998 Certificates to be issued as term certificates, the principal amount of the term certificates of each maturity to be subject to mandatory sinking fund redemption in each year;

(C) the rate of interest *per annum* to be applicable to the 1998 Certificates of each maturity; *provided that* in no event shall the true interest costs of the 1998 Certificates exceed 6.0%; and

(D) the dates upon which the 1998 Certificates (or specified maturities thereof) shall be subject to redemption at the option of the County and prices at which such 1998 Certificates shall be so subject to optional redemption, which prices may include a premium; and



(3) negotiate the terms of the sale of the 1998 Certificates to the Underwriters' Representative, which terms shall be set forth in a Certificate Purchase Agreement to be entered into among the County, the Trustee and the Underwriters' Representative (the "Certificate Purchase Agreement"), and to execute and deliver, for and on behalf of the County, such Certificate Purchase Agreement;

(4) upon the sale of the 1998 Certificates to the Underwriters' Representative, cause to be prepared a final official statement describing and setting forth such information concerning the County, the Project and the 1998 Certificates as may be necessary or appropriate to disclose all material information which a prospective investor would need to make an informed decision with respect to an investment in the 1998 Certificates;

(5) if the Coordinator determines that it is in the best interests of the County:

(A) acquire a letter of credit, a municipal bond insurance policy, a surety bond, standby bond purchase agreement or other credit enhancement device to provide credit enhancement for all or any portion of the 1998 Certificates (herein called a "Credit Facility");

(B) negotiate such terms and conditions relating to such Credit Facility as the Coordinator deems appropriate and in the best interests of the County; and

(C) execute and delivery all documents and agreements necessary or appropriate to obtain such Credit Facility, and use proceeds of the 1998 Certificates or other lawfully available moneys to pay any premium or other fees and expenses required to obtain such Credit Facility; and

(6) execute and deliver, for and on behalf of the County, the Agreement, the Certificate Purchase Agreement, the Site Mortgage and the Condominium Mortgage in substantially the forms now on file with the County Clerk in connection with the adoption of this Resolution, but with such changes, deletions and additions thereto as the Coordinator determines are necessary or appropriate and not inconsistent with the terms and conditions of this Resolution and applicable law;

The authority of the Coordinator to determine the terms of the 1998 Certificates as provided above shall be exercised by setting forth such terms as so determined and established in the Certificate Purchase Agreement and the Agreement and, to the extent so required under applicable law, shall constitute the completion of the determination of such matters by the County as a public body.

**SECTION 4. FURTHER AUTHORITY.** The Coordinator is hereby authorized and directed to take such action, expend such funds and execute and delivery such other documents, certificates and

instruments as may be necessary or desirable to consummate the transactions contemplated by the Agreement and this Resolution, to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of County with respect to the Agreement and the 1998 Certificates.

**SECTION 5. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption by the County Board of Commissioners.

**ADOPTED BY THE BOARD OF COMMISSIONERS FOR MARION COUNTY, OREGON AT A REGULAR MEETING HELD ON November 10, 1998 BY THE FOLLOWING VOTES:**

  
\_\_\_\_\_  
CHAIR

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

ori: Clerk  
cc: BOC  
Wasson  
Legal

~~From:~~ CINDY HLAVINKA  
~~To:~~ bwasson  
~~Date:~~ 11/24/98 4:03pm  
Subject: approval authorization

RECEIVED  
NOV 27 1998  
RISK MANAGEMENT

Hi Billy,

Peggy is gone this week or I'd ask her this question. Do you have a copy of the authorization the board gave you to sign on their behalf for the CHS project? I'm attempting to process the amendment to Melvin Mark's contract.

Thanks,

Cindy

cc: pmitchell

# CONTRACT REVIEW SHEET

Person Sending: <i>Processed by</i>	Department Name: <i>General Services</i>
Date Sent: <i>Lease</i>	

The attached: (CIRCLE ONE)  
☒ Contract      Amendment #\_\_\_\_      Grant      Lease

INCOMING FUNDS? YES NO (CIRCLE ONE)

If incoming funds you must attach a Revenue Management Sheet

Contractors Name:	<i>Meloy Mark Companies</i>		
Date From: <i>6/1/98</i>	Date To: <i>3/31/2000</i>		
Amount of Contract or Amendment: <i>697,500</i>			
If an Amendment, New Contract Total = \$n/a			
Certificates of Insurance Attached:	Liability (circle one) Yes No	Workers Comp (circle one) Yes No	If no insurance attached, why not?

## Description of Contract Services:

*Supervise final design; construction of CTS.*

For Risk Management Use			
Date Risk Received:		Date Scheduled on BOC Agenda	
Authorization for Health Administration to sign on behalf of BOC:  yes no		Additional Comments: <i>Not processed by normal review process Legal Counsel processed</i>	
Staff Review Signatures:			
<i>[Signature]</i>			
Risk Management	date	Fiscal Services	date
General Services	date	Legal Counsel	date

Date: \_\_\_\_\_  
 Returned to Department/\_\_\_\_\_ for \_\_\_\_\_ signatures.\_\_\_\_\_  
 Copy to Fiscal Services \_\_\_\_\_ / \_\_\_\_\_.

## PROJECT MANAGEMENT AGREEMENT

DATED: June 1, 1997

BETWEEN: MARION COUNTY, OREGON,  
a political subdivision of the State of Oregon and  
SALEM AREA MASS TRANSIT DISTRICT,  
a political subdivision of the State of Oregon (together, "Owner")

AND: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation ("Manager")

Owner owns certain real property known as block 5, SALEM, Marion County, Oregon, together with all improvements located thereon (collectively, the "Property").

Owner intends to develop the Property by the construction thereon of a mixed use facility, generally consisting of the following: (i) a transit mall and Transit District administrative offices and related Transit district facilities, including parking facilities, and office and retail facilities to be leased by the Transit District to third parties, all to be owned (via a leasehold condominium interest) and used by the Transit District in its mass transit and governmental operations, (ii) County administrative offices and related County facilities, including parking facilities, and office facilities to be leased or sold by the County to third parties, all to be owned (via a leasehold condominium interest) and used by the County in its governmental operations or leased or sold by the County to third parties, and (iii) interim improvements (such as a parking lot or landscaping) on a pad of land on the north side of the Property intended for future development. The mixed-use facility, during the construction thereof and after completion of construction, together with all building systems, fixtures, and equipment used in connection with the operation thereof is hereinafter referred to as the "Building" and, together with the Property, as the "Project."

Owner desires to engage Manager to perform certain duties in connection with the construction of the Project, as more fully set forth herein, and Manager wishes to accept such engagement, upon all the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Project Management Agreement (the "Agreement"), Owner and Manager agree as follows:

### 1. Employment, Term, Termination

#### 1.1 Employment

Owner hereby engages Manager exclusively to supervise the final design and construction of the Project for the Term of this Agreement and authorizes Manager to exercise, subject to the supervision of the Owner and upon all the terms and conditions hereof, such powers as may be necessary and appropriate for the construction of the Project during the Term.

Manager hereby accepts such engagement and agrees to perform all supervisory, management, and operational services and functions, including, without being limited to, those specifically set forth herein, reasonably necessary or incidental to the construction of the Project.

Commissioning of the Project is not included in Manager's Services and will be bid as a separate contract for services. Manager shall use its best efforts and devote such time as is necessary to perform properly the duties of Manager described in this Agreement. Manager is acting hereunder as an independent contractor, and this Agreement shall not be deemed to create any employer-employee relationship, either express or implied, between Owner and Manager or any fiduciary relationship, except as expressly provided in this Agreement.

## 1.2 Term

This term of this Agreement (the "Term") shall commence on June 1, 1998, and shall continue in effect until March 31, 2000, unless sooner terminated as provided in Section 1.3 (the "Term").

## 1.3 Termination

1.3.1 This Agreement may be terminated by Owner in the event of a material default by Manager in its obligations under this Agreement, including those provided in the Addendum to Contract, FTA Contract Requirements, attached hereto and incorporated herein as Exhibit A to the extent required by law to be applied Manager (the "FTA Requirements"), and the failure of Manager to cure the default within 20 days of written notice from Owner identifying the claimed default, or if the default cannot be cured in 20 days, then commencing to cure the default within 20 days of such notice and thereafter promptly curing the default.

1.3.2 Owner may terminate this Agreement immediately, without any notice or opportunity to cure, in any of the following events: Manager (a) files any form of voluntary bankruptcy petition, (b) is the subject of any involuntary bankruptcy petition, (c) makes a general assignment for the benefit of creditors, or (d) in any way takes advantage of any law relating to the protection of Manager as an insolvent entity.

1.3.3 This Agreement shall terminate automatically on the Completion Date (as defined in paragraph 2.3).

1.3.4 Either Owner or Manager may terminate this Agreement for any reason on 60 days prior written notice given to the other party of the termination date (the "Termination Date"), in which event Owner shall continue to make payments under this Agreement through the Termination Date and Manager shall assist Owner through the Termination Date with winding down the Project or transitional services.

## 2. Definitions

The terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified, unless the context otherwise requires:

2.1 The term "Project Budget" shall mean the budget of expenditures relating to the Project prepared by Owner with input and advice from Manager, as modified from time to time throughout the Term.

2.2 The term "Applicable Laws" shall mean all governmental laws, ordinances, rules, regulations, requirements, or restrictions imposed by the United States, the State of Oregon, the County of Marion, the City of Salem or any other jurisdiction, which as a matter of law, are applicable to the Project, this Agreement, Manager, Owner, or the parties' conduct under this Agreement, including but not limited to the FTA Requirements, to the extent to which Manager is required by law to comply with the FTA Requirements.

2.3 The term "Basic Fee" shall mean the fee payable to Manager as described in Section 2.1.01 of the attached Schedule 1.

2.4 The term "Completion Date" shall mean that date on which all of the following conditions shall have been met: (a) the construction of the Building has been completed, (b) a certificate of occupancy shall have been issued therefor, (c) tenant improvements for the office space in the Building to be occupied by Owner as of the Completion Date have been completed, and (d) the Building equipment and systems are operational.

2.5 The term "Construction Period" shall mean the period of time commencing on the date hereof and ending on the Completion Date.

2.6 The term "Impositions" shall mean all taxes, special assessments, use and occupancy taxes, transit taxes, water and sewer charges, charges for public utilities, license and permit fees, and other charges of any kind and nature whatsoever, which may during the term of this Agreement be assessed, levied, or imposed upon or become payable out of or become a lien on the Building or the Property or any part thereof, appurtenances thereto or the sidewalks, streets or vaults adjacent thereto, or any income, profits or revenues tax, assessment or charge imposed upon the rent received as such by Owner, or any municipal, state, or federal capital levy, estate, succession, inheritance or transfer taxes of Owner, or any franchise taxes imposed upon any owner of the Building or the Property, or any part thereof, to the extent that any such tax is imposed in lieu of or in substitution for any tax levied or assessed upon the Building or the Property or the rents payable for the use thereof.

2.7 The term "Other Project Contracts" shall mean contracts entered into between Owner and third parties, other than the contracts with an architect and general contractor, for goods or services to be used in the development and construction of the Project, copies of which shall be promptly provided to Manager after execution by Owner.

### 3. Management Fee

Owner shall pay the Manager a fee for Manager's services to be provided under this Agreement in the amount shown in Schedule 1, which amount shall be paid in the manner described on Schedule 1 attached hereto.

#### 4. General Obligations of Manager

##### 4.1 Standard of Care

In performing its obligations under this Agreement, Manager shall use reasonable care, skill, diligence, and efforts. Manager is not an architect, engineer, contractor or other design or construction professional, and Manager is not responsible for the means or methods of construction or the design or safety of the Project, nor is Manager responsible for Owner's compliance with Applicable Laws. Manager is responsible for using competent, diligent and professional efforts to monitor and supervise the performance by the design and construction professionals of the obligations they owe to Owner with respect to the Project.

##### 4.2 General Obligations

Manager will represent the Owner as the principal contact with design consultants and contractors. Manager will report to the Owner through the Review Committee established by the Owner pursuant to the Development Agreement between Marion County and the Salem Area Mass Transit District. Manager will be responsible for facilitating communications between the Owner, design consultants and contractors, conveying concerns, decisions and formal actions.

Manager will be responsible for maintaining thorough and complete project records and making regular status reports and regular briefings to the Owner. Manager will coordinate the flow of information, communications and formal documents so that the Owner has the material required to take timely action on policy, design and budget matters. Manager will be responsible for transmittal of documentation required for Owner approval or actions. Owner shall cooperate in all respects as necessary to facilitate Manager's performance of this obligation.

Manager is expected to use sound judgment in representing the Owner to other consultants and contractors, and in advising the Owner of pending issues or actions on the Project. Manager is expected to use management leadership and initiative in keeping the Project on schedule and within budget.

The Owner is a public entity. Manager, as a representative of the Owner, is open to critical examination by the public. To help the Owner operate in a fair and objective manner and to help protect the reputation of the Owner and its representatives, Manager should not create any conflict of interest or potential conflict of interest as Manager carries out its responsibilities. A conflict of interest occurs when the Manager, acting on behalf of the Owner, takes or fails to take any action, or makes a decision or recommendation where the effect would be to the private financial benefit or harm of Manager, Manager's officers, agents and employees, or their household members. Furthermore, any media questions or contacts regarding the Project shall not be addressed without prior authorization from the Owner.

During the construction document development phase, Manager shall represent the Owner at regularly scheduled and special team meetings; monitor the Project schedule for design and construction to promote timely completion of each phase of the Project; assist the



contractor and architect in reviewing design proposals, construction documents and bid packages for conformance with Owner's scope, quality standards, and budget; assist the Owner in analyzing the Project Budget, allocating unit costs for components of the Project, and seeking ways to reduce construction costs; and develop and maintain orderly Project records, including correspondence, reports and copies of original documents, addenda, change orders, supplementary drawings and specifications as may be required to memorialize the construction document development phase and the costs associated therewith.

#### 4.3 Employees

All individuals utilized by Manager in performing its obligations under this Agreement shall be employees of Manager and not Owner, and Manager shall be responsible for all wages, salaries, benefits, profit sharing, vacations, or any other form of compensation or benefit owed to such employees and for all withholding, workers' compensation insurance, and any other payment owed to a governmental entity on account of such employment.

Individuals utilized by Manager to perform key roles on this Project shall, so long as they remain in the employ of the Manager, perform in those roles for the duration of this Agreement, unless agreed otherwise in advance, in writing by the Owner, which agreement shall not be unreasonably withheld or delayed. The Owner shall have the right to approve persons proposed by the Manager to replace such key individuals, which approval shall not be unreasonably withheld or delayed.

Manager shall provide workers' compensation coverage before labor under this Agreement commences for all individuals employed by Manager who are not exempt from coverage.

#### 4.4 Conformance to Law

Throughout the Term of this Agreement, Manager shall obtain and hold all governmental licenses, authorizations, and permits necessary to its performance of its obligations under this Agreement. Manager shall, in performing its obligations under this Agreement, comply with all Applicable Laws or governmental rules or regulations. Without in any manner limiting the applicability of the foregoing, to the extent the following are applicable to Manager, Manager shall comply with the same; the provisions of ORS 279.312, 279.314, 279.316 and 279.320, which are attached as Exhibit B, as required by Oregon law, and FTA Requirements if, and to the extent, required by federal law. Owner shall also comply with all Applicable Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any litigation between the Owner and the Manager arising out of or related to this Agreement shall be brought and maintained only in the Circuit Court of Marion County in Salem, Oregon.

#### 4.5 Paying Agent

Manager shall not be responsible for holding funds of Owner. Manager shall be responsible for processing all Project related invoices, taking reasonable steps to review the

accuracy and validity of all invoices, and will forward all approved invoices to Owner for payment.

#### 4.6 Contract Coordination

Manager shall monitor and coordinate construction, assist the Owner in selection of vendors and subcontractors, and assist Owner in resolving disputes and claims.

#### 4.7 Site Preparation

Site preparation, including without limitation environmental remediation conducted by Owner prior to the date the notice to proceed is given to the general contractor, is not included within the scope of Manager's duties.

### 5. Final Plans

Manager shall use its competent and diligent efforts to assist Owner in causing the architect employed by Owner to develop final plans and specifications for the Project based on the scope plans (the "Final Plans") which shall be approved in writing by Owner, which approval shall not be unreasonably withheld or delayed. In this process, Manager shall assist Owner in the administration and enforcement of the contract between the Owner and the architect.

### 6. Construction of the Building

6.1 General. Manager shall provide the following services with respect to the construction of the Building:

6.1.1 assist Owner in the administration and enforcement of the contracts between the Owner, the architect, and the general contractor, including monitoring adherence to budget and schedule requirements.

6.1.2 subject to the provisions of Section 6.2, review and processing of change requests and change orders submitted by the general contractor.

6.1.3 assist the architect and the general contractor in developing a quality control program; review, process and facilitate the implementation of changes in the work to include change orders, filed orders and job instructions; and perform the following specific tasks in support of this requirement:

(a) facilitate the architect's preparation of a monthly observation report.

(b) review product submittals and shop drawings on behalf of the Owner with the architect and facilitate the architect's handling of any submittal not in compliance with specifications.

(c) attend contractor coordination meetings.

(d) maintain orderly files for: (i) correspondence received by Manager; (ii) reports of job conferences attended by Manager; (iii) governmental and special inspections of which Manager is aware; and (iv) reproductions of original contract documents including all addenda, change orders and supplementary drawings issued subsequent to the award of the contract, to the extent given to Manager. Manager agrees to use its competent and diligent efforts to monitor the contractor's and architect's responsibilities to compile materials they are obligated to compile as required under their respective contracts with Owner related to the Project.

(e) represent the Owner in regular and special meetings of the Project team considering such matters as progress, procedures, problems and conflicts.

(f) advise the Owner of issues, problems or concerns, including circumstances which may result in claims, delays or cost overruns, and help devise solutions; and

(g) all other construction management services reasonably necessary to facilitate the construction of the Building by the general contractor, substantially in accordance with the Final Plans as soon as is practicable and reasonable, including assisting the Owner in the administration of Other Project Contracts.

6.2 Changes. All requests for changes in, modifications of or supplements to the Final Plans (individually each a "Change" and collectively, "Changes") shall be submitted by Manager to Owner for its approval, together with Manager's recommendation as to whether the requested Change should be approved. Manager shall not proceed with any Change without Owner's prior consent given pursuant to this Section 6.2. Owner shall endeavor to notify Manager of its approval or denial of any requested Change within ten (10) days of the delivery of such request. Owner shall be responsible for all delays caused by Owner's failure to respond timely to a request for approval of a Change. Copies of all change orders shall be furnished to the Owner. Manager agrees to administer the review of the first 30 Changes without additional compensation. For each Change in excess of the first 30 Changes, Owner shall pay Manager an amount equal to five percent of the cost effect of each Change (whether a reduction in or addition to the Project Budget or any individual line item) as a fee for administering the review and approval of each such Change within 30 days after Manager's billing therefor.

6.3 Scheduling. Manager shall coordinate obtaining from the general contractor and delivering to Owner a schedule setting forth (a) the estimated percentage of completion of construction on each date on which a construction advance may be requested by the general contractor pursuant to the construction contract, (b) the estimated construction advance to be requested on each such date, and (c) the dates of substantial completion of the primary structural and mechanical elements of the Building.

6.4 Certificates of Insurance. Manager shall obtain certificates of insurance from the architect and general contractor on the Project as is required by their contracts.

#### 6.5 Physical Inspection

During the Construction Period, Manager shall observe the Project with sufficient frequency so that Manager shall, at all times, be apprised of the then-current status of construction to monitor conformance with the construction documents. Manager shall become acquainted with the Final Plans referred to in construction documents.

#### 6.6 Construction Reports

During the Construction Period, Manager shall work with the architect to render to Owner, within twenty (20) days of the end of each calendar month, a report for such month, which report shall contain at least the following:

6.6.1 The actual construction progress achieved during such month and to-date, and a comparison thereof to scheduled construction progress for the same periods;

6.6.2 The actual expenditures made during such month and to-date, by category of expenditure, and a comparison thereof to the Project Budget;

6.6.3 The estimated cost of completion of the Project;

6.6.4 The remaining available balance of funds budgeted by Owner for construction.

#### 6.7 Potential Defaults

Manager shall promptly inform Owner, in detail, of any default or impending default by the architect, the general contractor, or any other contractor under the architect's contract, the construction contract, or the Other Project Contracts, respectively, or by Owner under any such agreement, as to which Manager has any actual knowledge or information. To the extent reasonably practical, Manager shall endeavor to inform Owner thereof by telephone calls placed to Billy Wasson and John Whittington at their offices.

#### 6.8 Government Permits

Manager shall assist Owner with obtaining, or causing to be obtained, any and all governmental certificates, licenses, permits and approvals, necessary to the development, construction, occupancy and operation of the Project.

#### 6.9 As-Built Plans

Manager shall coordinate obtaining from the architect and the general contractor and delivering to Owner a complete set of "as-built" plans for the Building.

#### 6.10 Public Relations

During the Construction Period, Manager and Owner shall coordinate public relations activities concerning the Project.

#### 6.11 Additional Responsibilities

Manager shall perform the following additional responsibilities in connection with construction of the Project:

6.11.1 coordinate turnover of completed space to Owner, and coordinate system and equipment start-up with the Owner's maintenance personnel.

6.11.2 work with the architect to check each item on the punch list as it is corrected after substantial completion.

6.11.3 work with the architect to check if all project close-out items (i.e., bonds, warranties, as-built drawings, etc.) have been received from the contractor prior to final payment as required by the Construction Contract.

6.11.4 work with the architect and the general contractor to document any possibilities of claims for damage to work completed prior to occupancy if Owner occupies the project or any portion thereof prior to final completion of the work by the contractor.

6.11.5 coordinate the architect's provision of such warranty inspections and technical evaluations as may be required under the architect's agreement within 90 days of full project completion.

6.11.6 Manager shall also facilitate and coordinate the performance by others of such other duties and tasks as may be reasonably required in order to complete the Project on time and within the limits of the Project Budget, subject to the terms and conditions of this Agreement.

### 7. Advice to Owner and Inspections

#### 7.1 Bank Accounts

Manager will not hold any funds for Owner. All monies received by Manager for or on behalf of Owner shall be and remain the property of Owner and shall be deposited in the Owner's Disbursement Account established with the Marion County Treasurer.

#### 7.2 Advice to Owner

Upon obtaining knowledge thereof, Manager shall promptly notify Owner in writing of any violation of any Applicable Law, and, upon obtaining knowledge thereof, advise Owner of any potential violation of any Applicable Law. Manager shall work with the contractor and the architect to advise Owner of the steps required to cure such violation or future violation,

including whether or not such violation of such Applicable Law, or the application thereof to the Project or Owner, should be contested. Unless Owner shall elect to contest such violation or Applicable Law, Manager shall work with the architect to advise Owner as to such steps as are necessary to correct such violation or as are otherwise required to comply with Applicable Laws. If Owner elects to contest such violation of Applicable Law, Manager shall assist Owner in such contest and shall observe and consult with any professional advisers retained to conduct such contest. Nothing herein shall be construed to require or permit Manager to fail to cure promptly any such violation or fail to comply promptly with any such Applicable Law, if such failure would or might expose Manager or Owner to any criminal liability.

### 7.3 Impositions

Manager shall forward to Owner, for payment, all Impositions. Manager shall receive and review bills or statements for all Impositions and shall furnish receipted copies of such bills and statements to Owner. Manager shall also advise Owner (a) of any material increase in any Imposition, (b) whether the amount of any Imposition should be challenged, and (c) the means available for obtaining a reduction of the same, together with its recommendations as to the course of action to be pursued. If Owner shall so request, Manager shall institute appropriate protests or challenges to the Imposition or take such other appropriate steps to obtain a reduction of the same. All Impositions and any expenses of Manager reasonably incurred in contesting the same or otherwise seeking a reduction thereof, including legal, professional, appraisal, and accounting fees, if required, shall be expenses of the Project, chargeable to Owner.

### 7.4 Inspection

As necessary or appropriate, or when reasonably requested by Owner, Manager shall make physical inspections of the Project and work with the architect and the general contractor to make recommendations to Owner regarding maintenance or conservation work which may be necessary or appropriate to preserve or improve the value and profitability thereof. Manager shall notify Owner, promptly after Manager receives notice thereof, of any substantial damage to the Project or any personal injury or property damage suffered or claimed to have been suffered by any person on or with respect to the Project and Manager's recommendations with respect thereto. Manager shall forward to Owner all summonses, subpoenas, and other like legal documents served upon Manager relating to actual or alleged liability of Owner, Manager, or the Project, together with its recommendations with respect thereto.

### 7.5 Public Reports

Manager shall assist Owner when requested in the preparation of reports as required by Applicable Laws. All fees and charges required to be paid in connection with such reports, including the fees and disbursements in connection with such reports, including the fees and disbursements of professional advisors related thereto, shall be an expense of the Project, chargeable to Owner.

#### 7.6 Reports to Owner

Manager shall render to Owner, with the assistance of Owner, the following reports with respect to the Project: Monthly reports within twenty (20) days after the end of each calendar month, setting forth: (a) disbursements made during such month and for the year to date and (b) a comparison with the Project Budget for such month and for the year to date.

#### 7.7 Notifications to Owner

Manager shall notify Owner promptly of any information received by Manager with respect to any proposed zoning changes, condemnation proceedings, environmental actions or laws, request for easements, leasing or sales proposals, and such other matters as may relate to the Project, together with any recommendations Manager may have with respect to such matters and an estimate of the time available to Owner to consider such information before a response thereto is, in the reasonable judgment of Manager, required to be made.

#### 7.8 Additional Services

All other services not included in this Agreement shall be performed by Manager only upon prior written authorization from Owner and shall be paid on a basis agreed to by Owner and Manager prior to the performance of such services.

### 8. Indemnity and Insurance

8.1 Manager agrees to defend, indemnify, and hold Owner harmless from any claim for damages or injury to persons or property which are caused by Manager's negligence, willful misconduct, or breach of this Agreement, except to the extent caused by the negligence, willful misconduct, or breach of this Agreement by Owner. Owner agrees, subject to the Oregon Tort Claims Act, to indemnify, defend, and hold Manager harmless from and against any and all claims for damages or injury to persons or property which are caused by Owner's negligence, willful misconduct, or breach of this Agreement.

8.2 Manager agrees to provide insurance during the term of this Agreement as follows:

#### 8.2.1 Commercial and Automobile Liability

Commercial General Liability insurance "occurrence" form including personal injury with a \$1,000,000 (per occurrence) combined single limit bodily injury, including personal injury and property damage.

Automobile liability insurance with a \$500,000 (per occurrence) combined single limit bodily injury and property damage.

#### 8.2.2 Workers' Compensation

Workers' Compensation insurance required by Oregon statutes.

### 8.2.3 Other Insurance Provisions

The Owner shall be named as additional insureds on the above-described Manager's insurance policies, except Manager's errors and omissions policy.

### 8.2.4 All Coverages

(a) Manager shall provide a certificate(s) of insurance to certify that all insurance coverages, in the form(s) and limits required, are in full force and effect.

(b) Policies shall be endorsed to reflect that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner.

(c) Insurance is to be placed with insurers who meet the Owner's approval, which approval shall not be unreasonably withheld.

## 9. Termination

Upon the termination of this Agreement, Manager shall render to Owner (a) all materials and supplies, contracts and documents pertaining to the Project, and such of the accountings, papers, and records in Manager's possession as Owner shall request and (b) assign to Owner or its designee such existing contracts, if any, relating to the construction, operation, and maintenance of the Project as Owner shall direct.

## 10. Assignment

This Agreement may not be assigned by Manager without the prior written consent of Owner to such assignment. Any transfer or sale of Manager's business entity or majority ownership interest therein shall be deemed to constitute an assignment of this Agreement subject to this Section.

## 11. FTA Addendum

This Project is financed, in part, through a grant from the Federal Transit Administration to the Salem Transit District. The total amount of federal funds to be expended for compensation payable to the Manager under this Agreement is estimated to be Ninety Eight Thousand Dollars (\$98,000.00), which is 22.4 % of the total compensation payable. As a consequence of the federal participation in this Project, the FTA Requirements are attached to this Agreement, and the Manager agrees that, in connection with work on this Project contemplated by this Agreement, the Manager will comply with the FTA Requirements, to the extent required by the FTA Requirements. The CERTIFICATION REGARDING LOBBYING in the form attached as Exhibit C must be executed before this Agreement is considered a valid and binding agreement. Where any part of this Agreement is in conflict with the FTA



Requirements, the FTA Requirements shall govern. For purposes of determining the applicability of the FTA Requirements, Owner and Manager agree that this Agreement represents an agreement for personal services and not a construction contract or an agreement to provide labor or materials for a contract for construction, alterations, or repair. Owner and Manager understand and agree that not every requirement in Exhibit A, FTA Contract Requirements, apply to Manager and the Project. The nature of the Project and the section of the statute authorizing the FTA grant funding will determine which requirements apply. Requirements that do not apply will not be enforced.

12. Owner's General Responsibilities

Owner shall cooperate promptly in all reasonable respects, with Manager's efforts under this Agreement to support and facilitate Manager's performance of its obligations under this Agreement. Owner's consents, approvals, and decisions made under this Agreement shall not be unreasonably withheld or delayed. Owner shall deliver to Manager copies of all reports, contracts, correspondence, documents, and other information received by Owner in connection with the Project promptly after Owner's receipt thereof.

13. Miscellaneous

13.1 Notices

Any notice, demand, consent, approval, request, or other communication required or permitted to be given hereunder shall be in writing and shall be deemed to have been delivered when personally delivered (by electronic or other means) or on the second business day following its mailing by registered or certified mail (return receipt requested), postage prepaid, by deposit at an installation regularly maintained by the United States Postal Service, to the parties at the addresses set forth below:

If to Owner:

Attn: Project Director  
Marion County  
100 High Street NE, Fifth Floor  
Salem, OR 97301  
FAX No.: 503-588-5237

cc: Marion County Legal Counsel  
The Equitable Center, Suite 312  
530 Center Street NE  
Salem, OR 97301  
FAX No.: 503-373-4367

AND

Attn: Manager of Planning and Marketing  
Salem Area Transit District  
3140 Del Webb Avenue NE  
Salem, OR 97303  
FAX No.: 503-588-0209

cc: Ben C. Fetherston, Jr.  
Attorney at Law  
880 Liberty Street NE  
Salem, OR 97308  
FAX No.: 503-585-3978

If to Manager:

Melvin Mark Development Company  
Attn: Daniel J. Petrusich  
Suite 1380  
111 SW Columbia  
Portland, OR 97201  
FAX No.: 503-223-4606

cc: Ball Janik LLP  
Attn: Barbara W. Radler  
101 SW Main, Suite 1100  
Portland, OR 97204  
FAX No.: 503-295-1058

Either party may, by notice given as above described, designate a different address or addresses for notices to be given to it.

### 13.2 Entire Agreement

This Agreement contains the entire understanding of the parties and upon execution and delivery by both parties shall supersede any previous agreement between Manager and Owner as to the subject matter of this Agreement. This Agreement shall be binding upon the parties hereto, their personal representatives, heirs, successors and assigns, and may not be changed orally but only by written instrument signed by duly authorized representatives or officers of the parties hereto.

### 13.3 Applicable Law

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of Oregon.

### 13.4 Arbitration

13.4.1 If any dispute or difference which concerns a claim of \$30,000 or less shall arise between the Manager and Owner with respect to any matter or thing arising out of, or in any way relating to this Agreement, each party, at such party's option, shall have the right to that such claim, controversy or dispute between the parties arising out of or relating to the Agreement be determined by arbitration in accordance with the then effective arbitration rules of Arbitration Services of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. If litigation has been commenced in court for the purpose of protecting any right of that party, the arbitration provision is not waived except when:

(a) the party who is the defendant or respondent in such litigation shall be deemed to have waived its option to arbitrate said dispute if such party files a general appearance in the litigation prior to filing a claim in arbitration in the matter specified above; and

(b) the plaintiff or petitioner in such litigation will be deemed to have waived its right to arbitrate said dispute if such party fails to file a claim for arbitration in the manner specified above within sixty (60) days after a general appearance in the litigation has been filed by the party who is the defendant or respondent in the litigation.

13.4.2 If a party properly exercises its option to arbitration, arbitration of such dispute shall be mandatory and any pending litigation shall be stayed.

13.4.3 The award of the arbitrators shall be in writing. The Manager or the Owner shall have all rights arising under Oregon law regarding any arbitration award under this Agreement.

13.4.4 The Manager and Owner agree to join in one arbitration all persons or parties with claims relating to or arising out of the same transaction, occurrence, or series of transaction or occurrences as the dispute between the Owner and Manager, if there is a common question of law or fact.

### 13.5 Attorney's Fees

In the event of any lawsuit or arbitration between the parties arising out of the subject matter of this Agreement, which suit or arbitration shall result in a court's or arbitrator's rendering a decision, the prevailing party in such a suit or arbitration shall be entitled to an award of and to collect the reasonable attorney's fees incurred by it in the defense or prosecution of any such suit or arbitration, at trial or upon any appeal.

### 13.6 Schedules and Exhibits

The following Schedules and Exhibits are attached hereto and incorporated as part of this Agreement:

- |            |   |
|------------|---|
| Schedule 1 | Manner of Paying Development Fee                |
| Exhibit A  | Addendum to Contract, FTA Contract Requirements |
| Exhibit B  | Public Contract Provisions                      |
| Exhibit C  | Certification Regarding Lobbying                |

IN WITNESS WHEREOF, the parties have executed this Project Management Agreement as of the date first above written.

OWNER: MARION COUNTY  
BOARD OF COMMISSIONERS

SALEM AREA  
MASS TRANSIT DISTRICT

Mary Pearman  
Chair

DJW

Frank Frank  
Commissioner

4-16-98

\_\_\_\_\_  
Commissioner

MANAGER: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation

By: Daniel J. Beltrach  
Its: President

## SCHEDULE 1

### MANNER OF PAYING MANAGEMENT FEE

#### 2.1 BASIS OF COMPENSATION

2.1.01 The Owner shall compensate the Manager for the services performed under this Agreement as follows:

A total professional services fee of \$437,500.00 (the "Basic Fee") plus reimbursable expenses pursuant to paragraph 2.2 which shall not exceed \$25,000.00.

2.1.02 5 % of the cost of each Change in excess of 30 Changes, as provided in Section 6.2 of the Agreement.

2.1.03 Payments for reimbursable expenses shall be made from the Manager's invoice submitted to Owner no more frequently than on a monthly basis. The Basic Fee shall be paid in 22 equal monthly installments of \$19,886.36 each beginning on July 1, 1998, and continuing on the first day of each calendar month thereafter throughout the month following the end of the Term. Invoices for fees shall include a narrative description of services rendered during the preceding month.

2.1.04 Payments due the Manager under this Agreement and unpaid after 30 days from the date of the Manager's invoice, shall bear interest at the rate of 1.5% of the amount unpaid per month.

#### 2.2 REIMBURSABLE EXPENSES

Reimbursable Expenses, if reasonably and necessarily incurred, are in addition to the compensation for services, and include actual expenditures made by the Manager and the Manager's employees and subconsultants in the interest of the Project. Reimbursable expenses include:

- (a) Long distance and telephone communications.
- (b) Expense of reproductions, handling of drawings, specifications, and other documents, excluding reproductions made by Manager in Manager's office.
- (c) Mileage at \$0.315 per mile and travel expenses.
- (d) Postage, courier services, and overnight mail services.
- (e) Other out-of-pocket costs incurred by Manager payable to third parties in connection with its services rendered under the Agreement but only if the expenses are first approved by Owner.

question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor."

2 The term, "Recipient" shall mean the Salem Area Mass Transit District.

3 The term, "Contractor" shall refer to a party under any agreement undertaking contractual obligations to or for the benefit of one or more other parties which includes the Salem Area Mass Transit District.



(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

#### **Disadvantaged Business Enterprise Provision**

1. The Federal Fiscal Year goal has been set by Recipient in an attempt to match projected procurements with available qualified disadvantaged businesses. Recipient goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by Recipient as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, Recipient may declare the Contractor noncomplaint and in breach of contract.

(a) Policy - It is the policy of the Department of Transportation and Recipient that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum

opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of Recipient to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of Recipient procurement activities are encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, Recipient may declare the Contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with Recipient DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of Recipient and will be submitted to Recipient upon request.

(e) Recipient will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- \* Identification of qualified DBE
- \* Available listing of Minority Assistance Agencies
- \* Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.



(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

#### **Patents, Data and Copyright -**

**General.** If any invention, improvement, or discovery of the Recipient or any of its third party contractors is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report.

**Federal Rights.** Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of the Recipient, third party contractor, subrecipient and the Federal Government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, the Recipient agrees that, irrespective of its status or the status of any subrecipient or any third party contractor at any tier (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Recipient agrees it will transmit to FTA those rights due the Federal Government in any invention resulting from that third party contract described in U.S. Department of Commerce Regulations, "Rights to Grants, Contracts and Cooperative Agreements." 37 C.F.R. Part 401.

**Definition.** The term "subject data" used in this section means records information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information used for Project administration.

Federal Restrictions. The following restrictions apply to all data first produced in the performance of the Grant Agreement or Cooperative Agreement: Except for its own use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.

Federal Rights in Data and Copyrights. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in the following subsections of this Agreement. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to other parties.

Any subject data developed under the Grant Agreement or Cooperative Agreement, or under a third party contract or subagreement financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

Any rights of copyright to which a Recipient, subrecipient, or a third party contractor purchases ownership with Federal assistance.

Special Federal Rights for Planning, Research, and Development Projects. FTA's purpose in providing financial assistance for a planning, research, development, or a demonstration Project, is to increase transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Recipient of FTA financial assistance to support a planning, research, development, or a demonstration Project agrees that, in addition to the rights in data and copyrights described in this Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project, which is the subject of the Grant Agreement or Cooperative Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in this Agreement and shall be delivered as the Federal Government may direct. This paragraph of this Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use whose costs are financed with Federal transportation funds for capital projects.

Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of employees or agents of the Federal Government.

Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

**Interest of Congress** - No member of, or delegate to, the Congress of the United States shall be admitted to any share or port of this Contract or to any benefit arising therefrom. 41 U.S.C. 22.



**Prohibited Interest** - No member, officer or employee of Recipient or of a local public body during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

**2.** In connection with the performance by Contractor of work or services within the scope of this Agreement, Contractor agrees to comply with the following requirements, and to include these requirements in all subcontracts exceeding \$100,000 in value of every tier. Contractor further agrees to include the Contract Work Hours and Safety Standards Act requirements in all subcontracts exceeding \$2,500 in value (but not including subcontracts for the purchase of supplies, materials or articles ordinarily available on the open market):

**Contract Work Hours and Safety Standards Act  
Pursuant to Section 102 (Overtime):**

**(1) Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**(3) Withholding for unpaid wages and liquidated damages** - The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**(4) Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

**(5) Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B)

of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

#### **Section 107 (OSHA):**

**Contract Work Hours and Safety Standards Act** - The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

**Clean Air** - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Recipient and understands and agrees that the Recipient will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

**Clean Water** - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Recipient and understands and agrees that the Recipient will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

1. By signing and submitting this Contract, the Contractor is providing the signed certification set out below .

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Recipient may pursue available remedies, including suspension and/or debarment.

3. The Contractor shall provide immediate written notice to Recipient if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. Contractor may contact Recipient for assistance in obtaining a copy of those regulations.

5. The Contractor agrees by submitting this proposal or entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered

transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Recipient.

6. The Contractor further agrees by submitting this proposal or entering into this Contract that it will include the clauses 10 and 11, below, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Recipient may pursue available remedies including suspension and/or debarment.

10. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

#### 49 CFR PART 20—CERTIFICATION REGARDING LOBBYING

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413

(1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official \_\_\_\_\_  
Name and Title of Contractor's Authorized Official \_\_\_\_\_  
Date \_\_\_\_\_

**Buy America (construction and manufactured products)**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

***Certificate of Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company Name \_\_\_\_\_  
Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company Name \_\_\_\_\_  
Title \_\_\_\_\_

**Seismic Safety** - The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**Bid Bond Requirements (IFB for Construction Contracts)**

**(a) Bid Security**

A Bid Bond must be issued by a fully qualified surety company acceptable to Recipient and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

**(b) Rights Reserved**

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by Recipient to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of Recipient.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of Recipient, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Recipient's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Recipient) shall prove inadequate to fully recompense Recipient for the damages occasioned by default, then the undersigned bidder agrees to indemnify Recipient and pay over to Recipient the difference between the bid security and Recipient's total damages, so as to make Recipient whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.



### **Performance and Payment Bonding Requirements (Construction Contracts)**

The Contractor shall be required to obtain performance and payment bonds as follows:

#### **(a) Performance bonds**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Recipient determines that a lesser amount would be adequate for the protection of the Recipient.
2. The Recipient may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Recipient may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### **(b) Payment bonds**

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the Recipient may require additional protection as required by subparagraph 1 if the contract price is increased.

### **Performance and Payment Bonding Requirements (Non-Construction Contracts)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Recipient's interest. If the Recipient requires such bonding after execution of the Contract, then Recipient will pay the reasonable cost of the bond premium.

#### **(a) The following situations may warrant a performance bond:**

1. Recipient property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the Recipient, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

#### **(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Recipient determines that a lesser amount would be adequate for the protection of the Recipient.
2. The Recipient may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract

price. The Recipient may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Recipient's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Recipient shall determine the amount of the advance payment bond necessary to protect the Recipient. If the Recipient requires such bonding after execution of the Contract, then Recipient will pay the reasonable cost of the bond premium.

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Recipient shall determine the amount of the patent indemnity to protect the Recipient. If the Recipient requires such bonding after execution of the Contract, then Recipient will pay the reasonable cost of the bond premium.

#### **Warranty of the Work and Maintenance Bonds (Construction Contracts)**

1. The Contractor warrants to Recipient, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Recipient, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Recipient, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Recipient and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Recipient. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Recipient written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

#### **Davis-Bacon Act**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees - (i) Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is

not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be

responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination; debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**Record Retention/Access to Records** - The Contractor agrees that it will maintain all data, documents, reports, records, contracts, and supporting materials relating to this Contract and the performance of its obligations under this Contract. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Recipient, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11). Contractor agrees to provide the Recipient, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**3. In connection with the performance by Contractor of work or services within the scope of this Agreement, Contractor agrees to comply with the following provisions, which need not be included in subcontracts:**

#### **Termination**

**a. Termination for Convenience (General Provision)** The Recipient may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work

performed up to the time of termination. The Contractor shall promptly submit its termination claim to Recipient to be paid the Contractor. If the Contractor has any property in its possession belonging to the Recipient, the Contractor will account for the same, and dispose of it in the manner the Recipient directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Recipient that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Recipient, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The Recipient in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within 30 days after receipt by Contractor or written notice from Recipient setting forth the nature of said breach or default, Recipient shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Recipient from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that Recipient elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Recipient shall not limit Recipient's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional Service Contracts)** The Recipient, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.



**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Recipient, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor, within 4 days from the beginning of any delay, notifies the Recipient in writing of the causes of delay. If in the judgment of the Recipient, the delay is excusable, the time for completing the work shall be extended. The judgment of the Recipient shall be final and conclusive on the parties.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** The Recipient may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience or Default (Cost-Type Contracts)** The Recipient may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the Recipient or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Recipient, or property supplied to the Contractor by the Recipient. If the termination is for default, the Recipient may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Recipient and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Recipient, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Recipient determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the Recipient, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

#### **Dispute Resolution**

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Recipient's Contract Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision. In the event that the decision of the General Manager is contrary to law or violates the terms of the Contract, Contractor may pursue such remedy or relief as may be available for breach of Contract.

**Performance During Dispute** - Unless otherwise directed by Recipient, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Recipient and the Contractor arising out of or relating to this

agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Recipient is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Indemnity** - The Contractor shall, to the extent permitted by law:

Protect, indemnify and save the Recipient and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorney fees incurred by the Recipient and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the negligent acts, errors or omissions of the Contractor, including negligent acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and

Upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding including appeals, against the Recipient and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The Recipient shall not make any admission which might be materially prejudicial to the contractor unless the contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The Recipient shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The Recipient shall have the right to be represented therein by the advisory counsel of its own selection at its own expense.

The obligations of the Contractor under the above paragraph shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the Recipient, its officers, employees, agents or consultants, including negligence in (1) the preparation of the Contract documents, or (2) the giving of directions or instructions with respect to preparation of the Contract by written order. The obligations of the Contractor shall not extend to circumstances where the injury, or death, or damages is caused, in whole or in part, by the negligence of any third party operator, not including an assignee or subcontractor of the Contractor, subject to the right of contributions as provided in the next sentence below. In case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

## EXHIBIT B

### PUBLIC CONTRACT PROVISIONS

D.1.01 Conditions of public contracts concerning payment of laborers and material men, contributions to Industrial Accident Fund, liens and withholding taxes (ORS 279.312). Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

D.1.02 Condition concerning payment of claims by public officers (ORS 279.314).

(1) Every public contract shall also contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract.

(2) The payment of a claim in the manner authorized in this section shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

D.1.03 Condition concerning hours of labor (ORS 279.316)

(1) Every public contract shall also contain a condition that no person shall be employed for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the employee shall be paid at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or



(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279.334.

(b) An employer must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(2) In the case of contracts for personal services as defined in ORS 279.051, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

D.1.04 Condition concerning payment for medical care and providing worker's compensation (ORS 279.320).

(1) Every public contract shall also contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or payment for such service.

(2) Every public contract shall also contain a clause or condition that all employers working under the contract are subject employers that will comply with ORS 656.017.

## EXHIBIT C

### 49 C.F.R. PART 20--CERTIFICATION REGARDING LOBBYING

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

1.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

1.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

1.3 The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclosure accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure/

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, Melvin Mark Development Company, an Oregon corporation, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official \_\_\_\_\_  
Name and Title of Contractor's Authorized Official \_\_\_\_\_  
Date \_\_\_\_\_



## ADDENDUM TO PROJECT MANAGEMENT AGREEMENT

DATED: January \_\_, 1998

BETWEEN: MARION COUNTY, OREGON, a political  
subdivision of the State of Oregon ("County") and  
SALEM AREA MASS TRANSIT DISTRICT,  
a political subdivision of the State of Oregon (together, "Owner")

AND: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation ("Manager")

Owner and Manager are parties to a Project Management Agreement dated June 1, 1997 (the "Agreement") entered into as a result of a bid accepted by Owner which was made by Manager in response to Owner's request for proposal dated May 8, 1997, pertaining to the Courthouse Square project in Salem, Oregon. While undertaking an analysis of the budget and project documents in effect as of June 1, 1997, the parties determined that substantial reconsideration of the project design, budget and construction cost estimates was necessary. Owner requested that Manager undertake additional services, and Manager agreed to undertake such additional services.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Addendum to Project Management Agreement (the "Addendum"), the parties agree to modify the Agreement as follows:

1. Additional Services. Effective as of June 1, 1997, Owner engages Manager to provide the following preconstruction services which are in addition to those described in the Agreement: attend original design meetings, assist and advise Owner during the demolition phase, advise Owner on the building design and schedule, consult with Owner on appropriate predesign site investigations, assist Owner in developing agreements with the contractor, assist in refining original design to achieve parking and building efficiencies, consult with Owner on parking needs and alternatives, study feasibility of expanding existing courthouse garage, lead and advise development team (Owner, the contractor and the architect) through project redesign, attend and provide advice during financing meetings with Owner, bond counsel, and financial advisors, assemble "new design" budget and assist in determining current financial status, assemble data and run ARGUS financial models to review optimal project design, attend Transit, County and public forum meetings in a advisory capacity, draft the requests for proposals for the "north end" retail development, advise Owner during the retail or mixed used developer selection process, assist Owner with obtaining from third parties independent cost verifications covering various project components, attend Special Project Oversight Committee meetings on an as-needed basis, assist Owner with the design review process, and assist Owner with developing and reviewing bid documents.

2. Term. The term of this Addendum and the additional services provided by Manager pursuant to this Addendum shall commence on June 1, 1997, and shall terminate on May 31, 1998.

3. Payment for Additional Services. County agrees to pay Manager \$225,000.00 for the additional services described in Section 1 of this Addendum (the "Additional Fee"). Payment of the Additional Fee by County shall be made as follows: \$125,000.00 shall be paid immediately. The remaining balance of the Additional Fee shall be paid in four equal monthly installments in the amount of \$25,000.00 each on March 1, 1998, April 1, 1998, and May 1, 1998, and June 1, 1998.

4. Reimbursement for Expenses Incurred. County shall reimburse Manager for reimbursable expenses incurred in connection with providing the additional services under this Addendum, within 30 days after Manager's billing therefor, which billing shall be given no more frequently than on a monthly basis, in an amount not to exceed \$10,000 in the aggregate. These reimbursable expenses are in addition to those described in Section 2.2 of Schedule 1, which is attached to the Agreement, and which are capped at \$25,000.

5. Termination. Owner may terminate this Addendum at any time with an effective date of May 31, 1998 (instead of 60 days' prior written notice, as provided in Section 1.3.4 of the Agreement).

6. Effect of Addendum. The Agreement is modified only as set forth in this Addendum. Except as expressly modified, the Agreement remains in full force and effect. This Addendum and compliance with the obligations in this Addendum shall be subject to all the terms and conditions of the Agreement as if fully set forth in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum effective as of June 1, 1997.

OWNER: MARION COUNTY  
BOARD OF COMMISSIONERS

SALEM AREA  
MASS TRANSIT DISTRICT

Randall Franke  
Vice-Chair 1/28/98

Ryan  
4-16-98

Gary Keer  
Commissioner  
Commissioner

MANAGER: MELVIN MARK DEVELOPMENT COMPANY,  
an Oregon corporation

By: Daniel L. Peterson  
Its: 2/4/98

**Department of General Services  
Marion County, Oregon**

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**Request for Proposals**

**Project Management Services  
for  
Courthouse Square**

**May 8, 1997**

## **Introduction**

### **Purpose:**

Marion County and the Salem Area Transit District are seeking project management and coordination services required to supervise the final design and construction of a joint development project known as "Courthouse Square." The project has been in the planning and development stage for approximately one year. The firms of Arbuckle Costic Architects and Pence/Kelly Construction have been selected to design and build the facility. FTA has approved the transit district's funding and the county has secured interim financing to fund initial construction activities. The county will proceed with a bond sale in September to secure the remainder of their funding.

The project is situated on a city block in downtown Salem Oregon. Demolition and abatement of existing buildings started on April 21<sup>st</sup> and is expected to be completed by July 31, 1997. Construction is scheduled to begin no later than September 1, 1997. Schematic design work is completed and final budgets (GMP) are due on August 15, 1997. The project is scheduled for completion in April of 1999. However, cost estimates are still slightly higher than budget estimates allow.

The project consists of a 4 story, 178,000 gsf structure with an underground, 2-story, 365 vehicle parking structure. A 22-bus transit mall is located on the ground floor. The remainder of the structure will contain a combination of retail and office space. Cost estimates for the facility are \$36,000,000. Construction (hard) costs are estimated at \$25,000,000. Partial funding (\$9,220,000) for this project is provided by the Federal Transit Administration (FTA). The project will be constructed and managed as a condominium project with three owners.

### **Project Team:**

The successful consultant will work in concert with the county, transit district, a private developer, the architect and general contractor to provide management construction services. The consultant will contract with the owners (county & transit) and act as their agent. The county is acting as the lead agency for the parties. The project manager must be able to work cooperatively with all members of the development team and quickly assimilate the current status of the project and related management duties. The project must be within budget estimates by September 1, 1997.

**Selection Process:**

The owners are in need of an expedited process to select a project manager for this project. A short list of candidates will be selected from the proposals submitted. The owners reserve the option to determine how finalists are selected. We also reserve the right to contact finalists and obtain additional information necessary for our review. Interviews will be held with the finalists based on fee schedules, qualifications, scope of services offered, references and completeness of the proposal.

The owners reserve the right to reject any and all proposals received as a result of this RFP and/or cancel this solicitation if it is deemed in the public interest to do so. Consultants may be required to reduce or modify the scope of services as determined by the owners as part of the final contract terms. Final award of a contract will be contingent upon successful negotiation of a contract.

**Scope of Desired Services:**

- Analysis of existing budget and construction documents
- Finalize budget and construction costs
- Coordination of the project team
- Monitor and coordinate phasing of construction documents to insure owners goals and interests are being met
- Monitor construction costs, change orders and provide value analysis
- Monitor contract specifications
- Assist owners/contractors in selection of vendors and subcontractors
- Attend weekly meetings of development team
- Ensure code and permit compliance
- Conduct regular on-site inspections of project
- Coordinate activities of contractor and subcontractors
- Conduct testing and inspections as necessary to ensure quality
- Ensure maintenance of records, drawings, financial reports, billings, change orders and other related documents
- Resolve disputes and claims
- Provide owners with weekly progress reports
- Assist owners with cash flow, budget and progress payments
- Research and recommend ways to save on construction cost without compromising construction quality
- Assist in allocation of unit costs for each owner's share of project
- Participate in punch list and monitor building commissioning
- Provide daily assistance for questions, answers and dispute resolution

**Proposals shall include the following:**

1. Proposed fee schedule, including optional services, if any
2. A list of team members and their qualifications and titles
3. Which team member(s) will be on-site
4. Provide at least one (1) reference from: architect, contractor and owner
5. Experience and knowledge in managing projects of this type and size
6. Experience and ability to work in a team environment
7. Briefly discuss your ability to manage this project and what unique skills and talents you, and/or your team, offer the owners, if selected
8. Briefly describe the control methods, including computer systems and hardware, available to track and monitor budgets, schedules and project completion
9. A not to exceed budget for all reimbursable costs
10. The closest branch office and/or main office location if applicable
11. How will job-site office be established and who will be responsible for cost
12. What date are you available to start
13. Include a sample of the contract for proposed PM/CM duties

**Date for Submission of Proposals:**

Proposers shall submit three (3) copies of the proposal to:

Marion County Clerk's Office  
Marion County Courthouse  
100 High St. NE  
Salem Oregon, 97301

All proposals must be received no later than **3:00 P.M, May 19, 1997**. Proposals shall be titled "Courthouse Square, Project Management."

**For Additional information, Contact:**

Randy Curtis  
Marion County Department of General Services  
Marion County Courthouse  
Salem OR, 97301  
(503) 588-5455